

From: Kraig Salvesen <kraig.salvesen@gmail.com>

Sent: Friday, April 17, 2020 12:00 PM

To: Barrett, Jon <JBarrett@a2gov.org>; Vander Lugt, Kristen <KVanderLugt@a2gov.org>

Subject: My opposition to proposed zoning variance at #7 Ridgeway

Dear Mr. Barrett and fellow members of the Zoning Board of Appeals,

Hello, my name is Kraig Salvesen, resident of #3 Ridgeway St., located immediately south of #7 Ridgeway. I strongly oppose the granting of a variance to the petitioners, with my opposition falling under three main heads: (greater detail to be found in subsequent sections):

- **This request for variance is based on a hypothetical future development of the site, and should be made at a later date in conjunction with a proposed development**
 - City Code clearly states that appeals are to be granted "**only in cases involving practical difficulties**"; the current case involves no practical difficulties whatsoever as the owner is not proposing to build on the lot, but rather trying to forestall practical difficulties for her prospective buyer in furtherance of her financial interest. This does not seem to me to accord with the conditions established by the City Code for granting variances.

- **My property, #3 Ridgeway, is misrepresented as both "fronting Geddes" and facing south: it actually faces west, as would any development of #7, and is separated from Geddes by the Anthroposophical Society building**
 - The verbal portion of the application reads, inaccurately as if my house faces towards Geddes, with the consequence that development of #7 would be in my back yard. **In fact, my house faces Ridgeway to the west – my front setback is very relevant in establishing a template for a neighboring house**, particularly in light of the fact that current side setbacks allow #7 to be built extremely close to my house (~15 feet away). At that range, every foot farther west (towards the road) has a massive impact on my sightlines, such as would not be the case if the side setbacks were more typical
 - Curiously, multiple locations in the back section, pp. 7-13, correctly refer to the western Ridgeway-facing side of my house as the "front", both in diagrams and in text prepared by the applicants – **there seems to be a lack of consistency and attention to detail manifested in this application, or alternatively a substitution of the necessary interpretation where needed**, i.e., "facing away from #7" where needed, without taking the time to address the discrepancy in the supporting material.

- **The severe impact this variance would have on my property**, qualitatively, financially, and structurally, consisting in (but not limited to)
 - The impact of allowing a new structure to overhang the front of my house by an additional ten feet – I estimate that the SW corner of the new house would be contained on a line projected roughly 45 degrees out from the NW corner of my house
 - Additional undercutting of the soil on a steep slope, again within very close proximity to my 101-year old house which is terraced at a significantly higher level than the majority of #7
 - Potential removal of ~12 feet of my retaining wall fronting Ridgeway, posing additional hazard to the stability of my foundation and South and West walls

- Almost complete loss of privacy on the first floor of my house, which features clear sightlines along the length of the structure through north-facing windows towards the potential new development

- "A variance may be granted by the Zoning Board of Appeals only in cases **involving practical difficulties** or unnecessary hardships when all of the following statements are found to be true" (emphasis mine)
- It appears to me that the application **fails to meet this test completely as the applicant is not currently engaged in any plan to make concrete improvements to the property,** sketch on p. 13 and the fact that much of the document reads like an architect's proposal notwithstanding. Rather, the applicant is engaged in an attempt to sell the property (see realtor's sign on the lot as of 2/2020, and "for sale by owner" sign on the property for most of 2019). The subsequent materials go into great detail regarding topography, the appropriateness of applying various setback rules to potential new construction, and even goes so far as to use the language "the owner is not requesting building..." on p. 5 **as if** there were a current development under consideration, all losing sight of or obscuring the fact that none of these issues are relevant at this time **in a practical sense as specified in the City Code Chapter 55** as cited above. **The only practical undertaking the owner is currently engaged in is the attempt to sell the property.** The issue is not yet ripe for consideration, and should be brought to the Board by an owner, whoever that may be, requesting a variance in the furtherance of a concrete proposal, the impact of which may be properly gauged by the neighborhood.
- Why should this matter practically speaking, beyond incongruity with the wording of the criteria for awarding a variance? It seems to me that considering an issue in this light, when it is a **future hypothetical case** and not a concrete proposal, practically guarantees an inability to come to any sort of compromise that is mutually satisfying to both sides of the issue, *pro* and *con*. With a concrete proposal, there is an opportunity to jointly develop a solution that gives the developer what they are after, while preserving enough of what is important to the surrounding neighborhood through the adjustment of physical parameters, boundaries, and other tangible quantities. With a hypothetical, it seems to me extremely difficult for one side to answer the question "how much will make you happy," or for the other side to answer "how much is too much," and the respective pushes will be for "all" and "nothing." Contention is maximized.
- In particular, it seems to me impossible for the applicants to formally address the final point of the five-part test outlined in Ch. 55 Sec. 5:29, that variance be the "minimum variance that will make possible a reasonable use of the land or structure", since the **applicants themselves** are not proposing to make any use of the property other than as a financial instrument. There is no minimum variance that will allow achievement of discrete development objectives, since the owner has no such objectives in mind. However, as a practical matter to the current owner, a continuous increase in property value accrues as a result of suspending existing zoning restrictions, incentivizing maximum variance, or the maximum she feels she can achieve. The statute clearly states that **ALL** of the five statements must be true, so the weakness of this particular point is crucial to the overall argument.

- If the owner of #7 and her representatives feel that they have a strong case for a variance, then they should have no fears that a future owner of the property will succeed in petitioning for the change at such time as it is relevant. Considering a variance now, however, puts the neighbors at risk of being in the awkward position of not being able to argue effectively against the variance for lack of concrete plans object to, being in a sense reduced to simply repeating "no, no, no," and then hearing at a future time that "the issue has already been decided" when new development is pursued along lines to which prior hypothetical assent has been given. The discussion of "what kind of development in the abstract should be allowed" should be suspended in favor of discussing a future concrete proposal when such proposal is made – there is no need to have the debate or discussion now independently of specific plans, and the only potential benefit to doing so would be to the financial interest of the current owner.
- Finally and perhaps most importantly, **it seems that a willingness to consider variances on the basis of hypothetical future development is tantamount to allowing any property owner to apply for a variance at any time**, i.e., an "opening of the floodgates." Any owner could say "if I were to do X, it really would be great if I weren't restricted by regulation Y" at any time it pleased them, making their most persuasive attempt to show hardship "in theory" (as opposed to in practice), and the Board could be flooded by such proposals if the test of **current practical difficulties** is suspended. **It seems to me that if we are to have zoning restrictions at all, there should be a strong presumption in favor of retaining them until there is a specific variance requested by a property owner engaged in the act or the prospect of improving their property, the reasonability of which can be assessed according to its particular merits, and the particular impacts of which can be judged by other interested parties.**
- **Inaccuracies, inconsistencies and misrepresentations**
 - Numerous inaccuracies on p. 5, misrepresenting the orientation and even the location of my house:
 - **"The property to the south is fronting Geddes"**, in reference to my property at #3 Ridgeway
 - "Essentially this property abuts two rear yards and is the only property on this side of the Ridgeway peninsula that fronts towards the west for access to the property" – false, my property fronts towards the west and is #7's most immediate neighbor
 - Subsequent section: "As there is no property to the north nor (sic) the south that allows direct measurement the front yards (sic)" – again, false. #3 is #7's immediate neighbor, and the front setback is clearly illustrated on pages 9 and 13
 - **However, applicant's text on p. 9, second paragraph under Actual Average Existing Setbacks reads: "the proposed house's only neighbor sharing the same street-side orientation (3 Ridgeway St.) has a generous 45' front setback"**. Diagrams included on page 9 and 13 also clearly show my house facing towards the west, and show the extent of my front setback.
 - This is accurate, but **completely contradicts the text on p. 5**, indicating that my house faces south, which is central to the argument for a variance. **Is it the Zoning Board's intention to treat the text on p. 5 as if it has been written in good faith, given that it is flatly contradicted by the supporting materials?** I surely hope not! At the very least this reveals a disrespectful lack of care and attention to detail in preparing this document, if not a willingness to

- misrepresent critical details to advance a desired narrative, namely, that my house will be less impacted by #7 as it faces in the opposite direction
- It is my opinion that the interests of the public are best served by taking applications at face value, not "what they clearly meant to say" – although in this particular case, it is not clear what the application means to say in regard to the orientation of my house. These details are of great import to the neighbors, and should be both correct and consistent across submitted materials. In this case, **applicants should be asked to address and account for the discrepancy**
 - The fact of the matter is, #3 faces west just like #7 would do, and so it seems reasonable for me to request that the new house have a substantially similar setback to mine. Anything else would result in the spectacle of two quite prominent houses built more or less on top of each other (a minimum separation of ~15' could result under current setbacks), but with #7 and #3 staggered in a gap-toothed and untidy fashion, #7 being far to the front. It seems to me that the intent of the code in question must be to prevent jarring juxtapositions from occurring within neighborhoods, and **this application does a great deal of triangulation to establish a reasonable setback for #7 using indirect methods, while pointedly ignoring the obvious comparison that will be made by the naked eye, namely, to the house with the same orientation located fewer than 20 feet away to the south.**
 - **Severe negative impacts on my property** – much has been written about this on my behalf by my neighbors, I know, but it behooves me to restate here
 - As mentioned above, extreme proximity of #7 to #3 means that a decreased front setback has outsized impact of constraining my field of view
 - This can be seen most clearly in the diagram on p. 9, which gives some idea how the view from the front of my house would be curtailed by roughly 45 degrees, if not more
 - This degree of front extension would destroy the privacy of my front patio area, as it would be completely within view of #7's south-facing side windows
 - Potential structural/physical impact of increasing the scale of excavation/activity in extreme proximity to my house
 - As ably documented by my neighbor Gillian Feeley-Harnik, the division line between #3 and #7 cuts across the existing terracing upon which my house is situated, which presumably dates to the 1919 construction of the house
 - Increased scope of excavation, and extending that excavation further west, increases the quantity of earth that will be removed, and would need to be held in place on my uphill side. This poses greater risk to the integrity of my north wall in particular, and to my walls and foundations in general
 - Increased proximity to the road increases the likelihood a developer would remove the ~12 feet of street-facing retaining wall that belong to #7 as a consequence of Ms. McKinley's successful petition in the 1990s to subdivide her property into two buildable lots (see Feeley-Harnik)
 - In light of the two points above, **what restrictions are in place if any that insure development of #7 must "leave me whole," so to speak? Lot-lines notwithstanding, does #7 have an obligation not to render my structures and/or land unstable, and to bear any costs associated with doing so?**
 - I contacted the Planning division regarding this issue earlier in the year, specifically trying to protect my historic retaining wall and terracing, and

was told things along the lines of: "hopefully a neighbor wouldn't interfere with something like that" and that the City didn't like to get involved in such things, and **came to the conclusion that my only recourse in such case would be to file a lawsuit. Given that this is so, I am disinclined to allow increased scale of development as it increases the magnitude of the potential issue.**

- My north exposure contains the largest windows in the house – both NE and NW corners are essentially "solid windows" as part of what is in effect a solarium situated at the northern end of the house:



- With the increased setbacks, a new development would completely block the entirety of the two north-facing windows, **as well as a good portion of the**

west/front window when viewed from the west extremity of the room (e.g., the table pictured) **given the amount of front overhang being proposed**

- These same north-facing windows command a view of the entire first floor of the house along the north-south axis, as can be seen in the following pictures taken in the living room and dining room respectively:



- **As can be seen above, I am maximally exposed to any new development located at #7, reflecting the fact that for the prior century up until 2017 both parcels were held in common, with #7 being a scenic, tree-shaded lawn. As such, impacts of any new structure on my privacy and on my ability to enjoy the scenic surroundings are maximized.** It is in my interest to keep any new house to the minimum possible size, therefore I oppose any easing of the setback restrictions.

In conclusion, for the reasons enumerated above, I firmly oppose the present request for zoning variance. I should point out that there is a history of contention on this issue, stemming from the time more than 20 years ago when Ms. McKinley was allowed to carve off just enough of my parcel to make #7 a buildable lot. This took place before my time, but my understanding is that the opposition was unified, strong, and pursued at both the City and at a legal level. Given that issue was seemingly resolved in her favor allowing the lot to be built, it seems unreasonable that she should now be allowed to seek further consideration, given how severely the decision I have inherited encumbers my property and the properties of those near me. Jump balls should alternate favoring one team and then the other. She has had 20+ years as owner of both lots to pursue a zoning variance if she had an interest in such a thing on its merits – the fact that it is being proposed at this time when the lot is for sale gives credibility to the notion that her interest in the matter is purely financial.

If this issue is to be proposed and debated, let it be done so among neighbors: the current residents of Ridgeway and prospective future residents of #7, or at least a developer with some "skin in the game" proposing to usefully improve the land, who have in common a desire to come to a mutually agreeable solution, and who have an ongoing stake in the neighborhood. It is to adjudicate such discussions that I would imagine such a thing as the Board exists, not to forcibly secure favorable considerations on behalf non-residents whose only stake in the neighborhood is financial.

Thank you for your time and consideration.

Yours Sincerely,
Kraig G. Salvesen
3 Ridgeway St., Ann Arbor