

BEFORE THE BOARD OF ZONING APPEALS
TOWN OF WASHINGTON GROVE

IN THE MATTER OF:	:	
CHARLES KERSHAW and	:	Case No. 05-02
KATHLEEN HIGDON	:	
103 Brown Street	:	

OPINION AND ORDER

Charles Kershaw and Kathleen Higdon ("Applicants"), owners of a detached, single-family house located at 103 Brown Street, appeal to this Board of Zoning Appeals ("Board") the March 2, 2005 decision of the Washington Grove Planning Commission to deny Applicants a permit to construct additions to their house.

The Board conducted a public hearing to consider this appeal on May 7, 2005.

Under the power granted to the Board by Article VII, Section 11.2(b) of the Washington Grove Code of Ordinances ("Ordinances"), and based on the evidence admitted into evidence, the Board approves Applicants' appeal and grants the permit for the reasons set forth below.

1. Notice of Hearing. The Board finds that a notice of public hearing to consider the Applicants' appeal was given in compliance with Article VII, Section 11.311 of the Ordinances.

2. Denial of Building Permit by Planning Commission. The Applicants requested a building permit to construct an addition to the rear of their 2-1/2-story frame house, a second-story addition to their detached garage, and a one-story covered breezeway that would connect the house to the proposed garage structure.

Applicants' building permit request was denied by John A. McClelland, a member of the Washington Grove Planning Commission, by letter dated March 4, 2005. On behalf of the

Planning Commission, Mr. McClelland denied the permit because the Commission found that the proposed two-story garage structure would not be attached to the main building (i.e., the house) by any part of a common wall or roof, and that the structure is therefore an accessory building, as defined under Article VII Section 4.2 of the Code, rather than an addition to the house. The Commission further determined that the proposed two-story garage structure would exceed the number of floors and the height limitation permitted for an accessory building under Article VII, Section 9 of the Code.

3. Definition of a Common Roof. Article VII, Section 4.2 of the Code in part defines an accessory building as a “building ... not attached by any part of a common wall or a common roof to the main building.” Applicants assert that the roof of the proposed breezeway would be a common roof connecting the main building and the proposed two-story garage structure, and that the structure would therefore be an addition to the main building rather than an accessory building. Significantly, the Ordinances do not define “common roof”. In denying the permit, Robert Evans on behalf of the Commission testified that a “common roof” must cover living space in both the existing dwelling unit and in the proposed new construction.

In applying its definition of a common roof to the Applicants’ proposed design, the Commission appears to have adopted a definition that is so restrictive that a common roof may only occur when there is also a common wall between the two structures. This has the effect of changing the Ordinance’s definition of an accessory building from a subordinate building that does not share a “common wall **or** common roof” with the main building to a subordinate building that does not share a “common wall **and** common roof” with the main building.

In construing the Town Zoning Ordinance, the Board seeks to give effect to the purpose the Council intended to achieve when adopting the provision at issue in the case. In the event the

Ordinance does not explicitly provide a definition of a critical concept as is the case here (*i.e.* what is a common roof), the Board must resort to various well known rules of statutory construction in order to discern the intent of the Ordinance. These rules include: 1) reading the words of the Ordinance using their usual and ordinary meaning; 2) giving meaning to **all** of the words in the Ordinance; and 3) giving deference to the Commission which is the administrative agency charged with implementing the Ordinance.

The Board acknowledges the considerable effort the Commission devoted to resolving the difficult issue presented by Applicants' design—*i.e.* raising the specter of two dwelling units on one lot. The Board finds, however, that it may not in effect amend the Ordinance by substituting the “or” for an “and” in the definition of an accessory building. This change may **only** be done by the Council through the legislative process.

The Board defines a “common roof” as a roof that covers an area used for residential purposes (including accessory residential uses) where the covered area provides for direct access from both the existing dwelling and the proposed structure. An area used for residential purposes includes a porch. A porch, for the purpose of defining a common roof, is a covered structure at an entrance to a building that is of sufficient size and proximity to an existing dwelling and a proposed structure so that it provides usable space for residential uses such as sitting and eating.

The Board finds that the breezeway included in Applicants' proposed plans is effectively a porch covered by a common roof that will connect the main building and the proposed structure. Further, the Board finds that since the proposed structure will be attached to the existing dwelling by means of a common roof, the proposed structure is not an accessory building and the provisions pertaining to accessory buildings set forth in Article VII, Section 9 do not apply.

4. Granting of Permit. For the reasons stated above, the Board adopts a resolution

approving Applicants' appeal and granting the permit.

5. Applicability of this Opinion. The definition of "common roof" set forth in this Order and Opinion shall apply wherever applicable unless and until the Ordinance is amended to include a definition of "common roof."

Christine Dibble

Christine Dibble
Board of Zoning Appeals

Date: May 23, 2005

Minutes of the Board of Zoning Appeals of Washington Grove

The Board of Zoning Appeals met on May 7, 2005, at 9:00 a.m. in the Town Hall to conduct a public hearing on the appeal of Charles Kershaw and Kathleen Higdon ("Applicants"), 103 Brown Street, of the March 2, 2005 decision of the Washington Grove Planning Commission to deny them a permit to construct additions to Applicants' house.

Charles Challstrom, Christine Dibble, and Marc Hansen sat as the Board.

After conducting a public hearing on the appeal of Charles Kershaw and Kathleen Higdon, the Board adopted a resolution approving Applicants' appeal and granting the permit for the reasons set out in the attached Opinion and Order.

Respectfully submitted,

Christine Dibble

Christine Dibble,
Board of Zoning Appeals

Approved:

May 23, 2005