



CITY of MEDINA

Board of Zoning Appeals

Board of Zoning Appeals

Meeting Date: August 13, 2020

Meeting Time: 7:00 pm

Present: Bert Humpal, Brandilyn Fry, Mark Williams, Sam Livingston, Paul Roszak, Jonathan Mendel, (Community Development Director), Sandy Davis (Administrative Assistant)

Absent: Rob Henwood

Mrs. Fry made a motion to approve the minutes from the July 9, 2020 meeting as submitted. The motion was seconded by Mr. Livingston.

Vote:

Humpal	<u>Y</u>
Fry	<u>Y</u>
Williams	<u>abstain</u>
Roszak	<u>abstain</u>
Livingston	<u>Y</u>
Approved	3-2

Announcements: Bert Humpal announced that before the meeting began this evening, Sam Livingston was sworn in as an alternate on the Board of Zoning Appeals for a term ending December 31, 2023.

The Court Reporter swore in all attendees.

Old Business: None

New Business:

1. Z20-10 Cynthia Daniels 735 Westwood Dr. VAR

Mr. Mendel gave a brief overview of the case. Mr. Mendel stated this is a Variance request from Section 1155.01(c)(1) of the Planning & Zoning Code to allow a 8 ft. tall solid fence in the rear yard when the top two feet must be 50% opaque. Mr. Mendel stated the property is zoned R-1, Low Density Urban Residential.

Mr. Mendel stated the property is located on the north side of the 700 block of Westwood Drive and backs onto the Reagan Parkway ROW.

Mr. Mendel stated the applicant proposes an 8 foot tall solid fence along the rear property line of the subject property to try to mitigate the impact of Reagan Parkway. Mr. Mendel stated the zoning code permits an 8 foot tall fence where proposed, but the top two feet must be at least 50% ‘open’.

Mr. Mendel stated there are seven factors that the BZA should consider when evaluating whether or not a practical difficulty exists.

Mr. Mendel stated the Board shall weigh the following factors to determine whether an area variance should be granted:

A. *Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;*

Mr. Mendel stated a fence can still be installed that almost meets the applicant’s desires.

B. *Whether the variance is substantial;*

Mr. Mendel stated the proposed 8 foot tall solid fence is a 33.3% increase from the maximum 6 foot solid fence permitted by the Planning and Zoning Code.

C. *Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;*

Mr. Mendel stated the essential character of the neighborhood may not be altered as the subject property and neighborhood properties’ rear lot line are already 4-6 feet above the grade of the Reagan Parkway ROW and many properties have large mature trees and shrubs equal to or much taller than the proposed fence and/or many of the existing fences. Mr. Mendel provided existing conditions photographs of the neighborhood fences as well as the applicant’s existing fence.

D. *Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);*

Mr. Mendel stated the variance would not adversely affect the delivery of governmental services.

E. *Whether the property owner purchased the property with knowledge of the zoning restrictions;*

Mr. Mendel stated the fence regulation has been in place for an extended period of time and the applicant purchased the subject property in 2000, but it is not known

whether they had knowledge of the regulation at the time the applicant purchased the subject property.

F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

Mr. Mendel stated the fence's top 2 feet could be 50% 'open' in design.

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

Mr. Mendel stated the intent is to maintain balance the need for enclosing usable yard areas, but not create excessive enclosing of properties.

Mr. Mendel stated the BZA must weigh the above seven factors for the requested variance and determine if a practical difficulty exists that would merit a variance from Section 1155.01(c)(1).

Present for the case was the property owner, Cynthia Daniels. Ms. Daniels provided photos of her property. Ms. Daniels stated the property currently has 3 sides of fence. Ms. Daniels stated one is a 6' fence, one is a white vinyl 6' fence, and one is 6'. Ms. Daniels stated the pine trees on her property were removed and new shrubs were planted in their place. Ms. Daniels stated she has lived at this property for over 20 years and the truck traffic noise has been very loud. Ms. Daniels repeatedly expressed the "forbidden" trucks on Reagan Pkwy. are very loud and she has contacted many departments in the city to bring this to the city's attention.

Ms. Daniels stated she has taken many measures to try and reduce the noise, including heavy blinds and shrubberies. Ms. Daniels stated the proposed new fence would be a nice addition to the neighborhood. Ms. Daniels pointed out that the natural slope of the yards is uneven whereas each neighbor on the east side can look directly into the yard of the neighbor on the west side. Ms. Daniels showed existing conditions photos. Ms. Daniels stated her lot is 100' ft. wide as well as her neighbor's lot. Ms. Daniels stated she can see all the way into her neighbor's yard.

Ms. Daniels stated she hopes the board considers her request and approve it due to the noise.

Mr. Livingston asked if the fence is not only for the east/west portion of the fence but also the east fence and the west fence. Ms. Daniels stated the white fence will be removed and replaced by an 8' fence. Ms. Daniels stated on the west side with the not nice fence would be placed right next to it and would go right up to the recently installed bushes on the other side. Ms. Daniels stated her fence would be 8' on 2 sides. Ms. Daniels mentioned that the neighbor's fence is 3" on her property.

Mr. Mendel stated that would be more of a civil matter issue. Mr. Mendel stated with fences, 3" is a typical margin of error when installed.

Mr. Mendel stated the adjoining property owners have been notified and the city has not received any responses.

Mr. Humpal stated he drives by from Ashwood down Reagan almost every day of the week and he notes there are at least 6 neighbors with fences in various heights and materials, and none are open at the top. Mr. Humpal stated he does not know what their height is. Mr. Humpal stated it is quite common through that corridor. Ms. Daniels presented photos of an 8' fence at 1088 Ashwood.

Mr. Williams asked for clarification on the request. Mr. Williams stated there are three sections of fence, one on the north side towards Reagan Pkwy, one on the east side of the property and west side of the property. Mr. Williams asked if all of those are intended to be 8 foot. Ms. Daniels stated only the two, one on the west side and the north side will be 8'. Mr. Williams stated he has no problem with the 8' fence to Reagan Pkwy. but he does have a problem with the 8' fence to the neighbor as it speaks to the reason for the variance that Jonathan spoke to earlier and as ownership changes, what the board decides will set how that will work out in 20 years as you plan with your neighbor's fences. Mr. Williams stated he is not in favor of the fence on the interior.

Mr. Livingston stated he would agree with Mr. Williams from the perspective of understanding an 8' fence is a barrier to public space however, when you look across back yards of a neighborhood and see varying fence types and heights, it changes the scope of the neighborhood a bit. Ms. Daniels stated she can see the complete back yards of the neighbors because of the slope of the yards.

Mr. Williams clarified that the variance was for a "solid" top 2' on the fence for a total of 8' in height. Mr. Williams stated the applicant still has the ability to put the additional top 2' up but 50% screening or lattice on the interior fence.

Mr. Humpal asked the applicant if she has a compromise she could suggest based on the board's comments. Ms. Daniels stated she needs an extra sound barrier that she feels the solid fence could provide.

Mrs. Fry stated she personally does not think a solid fence is going to subdue the sound. Mrs. Fry stated unless you put a huge mass wall, the sound will still be there. Mrs. Fry stated she feels that 2' taller is not going to make a difference or reduce the sound.

Ms. Daniels repeated her argument about the speed limit, trucks, and sound on Reagan Pkwy.

Mr. Roszak stated he feels the fence is not going to solve all of her noise problems. Mr. Roszak stated plants absorb a lot more sound than wood or fence material does. Mr. Roszak stated for him it comes down to the fence is not going to solve her problem and it

is not going to look good and it will diminish the character of the neighborhood. Mr. Roszak stated he is also undecided about an 8' fence on Reagan Pkwy because of the varying heights.

Mr. Humpal stated it sounds like the board is not comfortable with the request and he would like to try and mediate the request.

Mr. Williams stated to Mr. Roszak's point of the varying heights on Reagan Pkwy., he feels the board needs to be sensitive to the fact that it is a potential nuisance and is not one the city can totally obviate and the property owner is suggesting a potential solution for part of the problem and he feels that is reasonable.

Mr. Williams stated he is not in agreement with the 8' fences between the neighbors as it will be visually very impactful.

Mr. Livingston stated the board must also consider as one of the 7 considerations for a variance, is the neighborhood impact. Mr. Livingston stated he is comfortable with the 8' along Reagan Pkwy but is not comfortable with an 8' fence on the side property lines.

Ms. Fry asked if the city allows fences to be back to back. Mr. Mendel stated there is nothing in the code to prohibit it.

Ms. Daniels stated the lattice top would be more aesthetically pleasing but then her backyard would have three different types of fences on it.

Mr. Mendel stated the board does not have to give permission for the 8' fence with the top 2' 50% open as it is permitted in the code.

Mr. Williams made a motion to approve in part a variance request from Section 1155.01(c)(1) of the Planning & Zoning Code to allow an 8 ft. tall solid fence on the portion of the property abutting Reagan Pkwy (north side) because the property owner's predicament cannot be obviated by another means however the board did not approve the 8' tall solid fence on the west side of the property as it will change the essential character of the neighborhood.

The motion was seconded by Mr. Livingston.

Vote:

Humpal	<u>Y</u>
Williams	<u>Y</u>
Livingston	<u>Y</u>
Fry	<u>N</u>
Roszak	<u>N</u>
Approved	3-2

Mr. Mendel gave a brief overview of the case. Mr. Mendel stated this is a variance request from Section 1113.05(1)(2)A.2 of the Planning & Zoning Code to permit a pool partially in the front yard setback when such structures are required to be in the rear yard.

Mr. Mendel stated the property is Zoned R-1, Low Density Urban Residential. Mr. Mendel stated the property is located at the northeasterly corner of Burntwood Dr. and Jasper Ln.

Mr. Mendel stated the applicant requests keeping an above ground pool partially within the minimum required front yard setback along the Jasper Ln. side of the subject property.

Mr. Mendel stated the applicant followed the correct permit application process, but Community Development Department staff incorrectly approved the location of the proposed pool partially within the front yard setback on the westerly side of the subject property. Mr. Mendel stated this issue was discovered during final permit inspection.

Mr. Mendel stated although staff incorrectly approved the proposed pool location, it does not unilaterally permit noncompliance with the setback requirements. Mr. Mendel stated the applicant requests this variance in order to keep the pool in its current location which is 20 feet into the minimum required 40 foot front yard setback.

Mr. Mendel stated the Board shall weigh the following factors to determine whether an area variance should be granted:

B. *Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;*

Mr. Mendel stated the pool is setback at least 20 feet from the westerly property line along the Jasper Ln. frontage and located within the yard enclosed by a full 6 foot tall solid fence.

B. *Whether the variance is substantial;*

Mr. Mendel stated the variance is 50% of the minimum required setback, but the pool is not readily visible from outside the property as it is located within the fully fence enclosed yard.

C. *Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;*

Mr. Mendel stated the essential character of the neighborhood may not be altered as the subject pool is located within the enclosed yard and visually obscured by a compliant 6 foot tall solid fence.

D. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

Mr. Mendel stated the variance would not adversely affect the delivery of governmental services.

E. Whether the property owner purchased the property with knowledge of the zoning restrictions;

Mr. Mendel stated the applicant's pool permit application was incorrectly approved by Community Development Department staff and, therefore, may have presumed the pool location was compliant.

F. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or

Mr. Mendel stated the pool could be moved to a compliant location on the property, but that would not be noticeable from outside of the property due to the fully enclosed yard.

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

Mr. Mendel stated, the intent of this requirement is maintain a standard aesthetic of principal buildings along street frontage when the intended or actual consistent character is primarily principal building front facades. Mr. Mendel stated the Jasper Ln. side of the subject property is more accurately considered the corner side yard, but is required to maintain the minimum 40 foot front yard setback.

Mr. Mendel stated the BZA must weigh the above seven factors for the requested variance and determine if a practical difficulty exists that would merit a variance from Section 1113.05(1)(2)A.2.

Present for the case was the property owner, Thomas Lane, 1035 Burntwood Drive, Medina, Ohio. Mr. Lane stated they purchased the house approximately 2 years ago. Mr. Lane stated they were in the final phase of the pool installation and were actually putting the deck up the next day when they were informed by the inspector that the pool location was not compliant.

Mr. Mendel stated if the proposed deck attached to the pool is within the compliant area of the yard, it should be fine. Mr. Mendel stated in the interest of this, if the board granted this variance, allowing the flexibility to put a deck that wraps around the pool would not be inappropriate. Mr. Livingston asked if the deck will be away from the fence side of the pool. Mr. Lane stated yes.

Mr. Mendel stated if the board approves the variance, the board may add something specific about the deck to the approval if they wish and it will be part of the review.

There was a review of the existing conditions photographs of the site. Mr. Lane stated if he had to put the pool in the compliant area per code, he would have had to remove a cluster of trees in his yard.

Mr. Livingston stated the way the fence is located on the corner lot, the location of the pool is a non-issue.

Mr. Williams stated he agrees and he stated he hates the way the city deals with corner lots by not allowing more flexibility. Mr. Williams stated he has no problem with this request and he would like to see the city give more flexibility to the staff for corner lots.

Mr. Williams made a motion to approve a variance from Section 1113.05(1)(2)A.2 of the Planning & Zoning Code to permit a pool that was installed partially in the front yard setback to remain in that location and to allow staff flexibility on placement of the future deck with respect to size restrictions in the Planning & Zoning Code based on the finding that the essential character of the neighborhood would not be substantially altered by granting the variance.

The motion was seconded by Mr. Roszak.

Vote:

Rozzak	<u>Y</u>
Livingston	<u>Y</u>
Fry	<u>Y</u>
Humpal	<u>Y</u>
Williams	<u>Y</u>
Approved	5-0

3. Z20-12 969 N. Court Street Sgt. Clean's Car Wash VAR

Mr. Mendel gave a brief overview of the case. Mr. Mendel stated this is a variance request from Section 1147.06(c)(4) & 1147.14(d) of the Planning & Zoning Code to allow a third wall sign when only two wall signs are allowed. Mr. Mendel stated the property is zoned C-3, General Commercial.

Mr. Mendel stated the property is located on the west side of the 900 block of N. Court Street.

Mr. Mendel stated the applicant's client has an existing car wash business at the subject site that has been operating continuously since at least 1985.

Mr. Mendel stated the subject property has maximized the permitted amount of wall signage under the zoning code. Mr. Mendel stated the applicant requests a third wall sign (28 sqft) for the building to be placed on the south building façade.

Mr. Mendel stated the zoning code only permits a maximum of two wall signs for buildings (primary and secondary).

Mr. Mendel stated when a sign variance is requested, as in this case, a practical difficulty must exist. Mr. Mendel stated there are seven factors that the BZA should consider when evaluating whether or not a practical difficulty exists. Mr. Mendel stated the Board shall weigh the following factors to determine whether an area variance should be granted:

1. ***Construction of a conforming sign would obstruct the vision of motorists or otherwise endanger public health.***

Mr. Mendel stated none of the existing conforming signage obstructs the vision of motorists or endangers public health.

2. ***A conforming sign would be blocked from the sight of passing motorists due to existing buildings, trees, or other obstructions.***

Mr. Mendel stated all the existing conforming signage is readily visible to passing motorists.

3. ***Construction of a conforming sign would require removal or severe alteration to significant features on the site, such as removal of trees, alteration of the natural topography, obstruction of a natural drainage course, or alteration or demolition of significant historical features or site amenities.***

Mr. Mendel stated conforming signage would not require severe alteration to significant site features.

4. ***A sign that exceeds the allowable height or area standards of this Ordinance would be more appropriate in scale because of the large size or frontage of the premises or building.***

Mr. Mendel stated the proposed third wall sign may not be appropriate for the subject property as there is ample site signage (wall and ground) throughout the property to indicate the business.

5. ***The exception shall not adversely impact the character or appearance of the building, lot or the neighborhood.***

Mr. Mendel stated although there is ample signage throughout the immediate neighborhood, the proposed third wall sign could be considered out of character for the subject property and the surrounding vicinity.

6. ***The variance sought is the minimum necessary to allow reasonable use, visibility, or readability of the sign.***

Mr. Mendel stated the proposed sign may not be the minimum necessary to allow visibility of the existing car wash operation at the subject site. Mr. Mendel stated a car wash (and this existing building) has been operating continuously at this location since at least 1985.

7. *The variance will be consistent with the general spirit and intent of this Ordinance.*

Mr. Mendel stated sign regulations are established in the Planning and Zoning Code to promote clarity in sign communications; to balance sign communications; to promote a harmonious relationship between sign types, sign locations and land uses; and to protect the public health, safety and welfare from the hazards resulting from indiscriminate placement.

Mr. Mendel stated the BZA must weigh the above seven factors for the requested variance and determine if a practical difficulty exists that would merit a variance from Sections 1147.06(c)(4) & 1147.14(d).

Mr. Humpal asked about the proposed sign location. Mr. Mendel stated the staff report is incorrect and the sign is being proposed on the “north” side of the building.

There was a brief discussion regarding past sign approvals for ground signs. Mr. Mendel stated the subject property has fully maximized all primary and secondary wall signage allowances.

Present for the case was Dean Schramm, Schramm Signs, 41431 Schadden Rd., Elyria, Ohio, representing Sgt. Clean’s Car Wash. Mr. Schramm stated he did the project and knows where the car wash is located but when he drove past it on the way here, he almost passed the building by the time he saw the signage. Mr. Schramm stated he does not feel the front sign is very effective. Mr. Schramm stated most traffic comes from the north. Mr. Schramm stated it is a difficult location and he does not feel the request is too much. Mr. Schramm stated the letters on the proposed sign are 23”.

Mr. Livingston stated it makes sense to have a sign on the north side of the building and not so much the south side. Mr. Livingston suggested moving the south side sign to the north side of the building. Mr. Roszak stated he would be open to that suggestion. Mr. Livingston stated they would not need any approval for that. Mrs. Fry stated the south side sign is smaller and she feels it should be larger letters on the north side. Mr. Williams stated he would be willing to give a variance for size before giving a variance for another sign. Mr. Livingston stated a size variance on the north side would make more sense than a sign for the south.

There was a brief discussion regarding the number of allowable signs per building per code.

Mr. Williams stated to him it is an equity thing because of the size of the building, it makes sense to have larger letters on the north side but he would like to have the applicant compromise in some way.

Mr. Schramm stated the site has 2 ground signs. Mr. Schramm stated he feels the ground sign on the front is worthless and he will speak with the business owner about possibly removing the front ground sign. Mr. Schramm stated the front ground sign may be more for the logo. Mr. Schramm stated the other ground sign is where the entrance is located and is the sign the business should have. Mr. Schramm stated he defers to the board's judgement.

Mr. Mendel stated if the applicant were to move the south sign location to the north side of the building, it would need to be determined which the primary is and which is the secondary side of the building. Mr. Mendel stated the sign size requirements for primary and secondary signs.

Mr. Schramm stated the client may be going away from the Sgt. Clean logo so he would like to table this request and come back. Mr. Schramm suggested possibly removing the Sgt. Clean logo on the front and use it for the side sign. Mr. Schramm stated it would then be getting rid of one sign and then have the north sign.

Mr. Mendel stated from staff perspective, if the request is compliant with the code, it would be a simple administrative approval. Mr. Mendel stated if the number of wall signs is adjusted to be compliant with the code, a variance would not be needed.

Mr. Schramm stated there is a sign on the north, two signs on the east, two ground signs and three signs on the building. Mr. Schramm stated he feels it would be more appropriate to bring to the board a request for a variance for a third sign. Mr. Mendel stated the client should look at the total signage package on the building, reconfigure it the way they would like, and bring it back to the board if a variance is still needed.

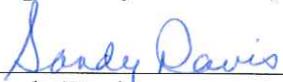
Mr. Livingston stated he would like to see the south sign removed and put on the north side which would require no variances. There was a brief discussion regarding the site orientation and sign locations.

Mr. Schramm requested to table the request.

Mr. Mendel stated the parking garage has a completion date of August 21st. Mr. Mendel stated the Medina City Development Corporation has issued an RFP/RFQ for the development of the remainder of the parking surface lot to W. Liberty Street. Mr. Mendel stated the lot has 100' of frontage along W. Liberty and approx. 138' deep. This is a nice property for a developer to maximize in the C-2 zoning district. Mr. Mendel stated any development would likely need to come to the Board of Zoning Appeals because there is a part of the zoning code for the Public Square area in the C-2 zoning district requires buildings cannot exceed 5,000 sq. ft. footprint and this building would likely be at least 10,000 sq. ft. footprint.

Having no further business, the meeting was adjourned.

Respectfully submitted,



Sandy Davis



Bert Humpal, Chairperson