



# CITY of MEDINA

## Board of Zoning Appeals

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### Board of Zoning Appeals

Meeting Date: June 11, 2015

Meeting Time: 5:30 pm

Present: Bert Humpal, Kris Klink, Mark Williams, Jonathan Mendel, (Community Development Director), Justin Benko (Associate Planner), Sandy Davis (Administrative Assistant), Jim Bigam joined the meeting at 5:50 pm.

Absent: Mark Pinskey

Announcements: Mr. Humpal stated there are only 3 board members present so an approval would take all three votes to pass. Mr. Humpal stated the applicants may opt to table their case for the next meeting.

Old Business:

Mr. Humpal stated case Z15-06 will be heard out of order in order to allow the applicant to arrive.

New Business:

1. Z15-14      121 N. Harmony      Russell Kunkler      VAR  
Justin Benko gave a brief overview of the case. Mr. Benko stated this is a Variance request to section 1113.05(L)(2)(A)(7) of the Planning and Zoning Code to permit a proposed 1024 sq. ft. detached accessory building in excess of the maximum allowed 744 sq. ft. square footage allowance for the lot and a Variance request to section 1113.05 (L)(2)(A)(5) of the Planning and Zoning Code to permit an accessory structure that is 18 ft. in height where 15 ft. tall accessory structures are allowable by code

Mr. Benko stated the site is located on the west side of N. Harmony Street, north of E. Liberty Street and south of E. Friendship Street.

Mr. Benko stated the applicant is requesting to construct a 1024 sq. ft. detached garage building at the site. Mr. Benko stated the proposed height of the garage is eighteen feet. Mr. Benko stated there is an existing two car detached garage that would be removed as part of the project. Mr. Benko stated the Planning and Zoning code permits a maximum

square footage of 744 sq. ft. for all accessory structures on this property with a fifteen foot height max. The applicant is seeking accessory structure size and height variances.

Mr. Benko stated the Board shall weigh the following factors to determine whether a variance should be granted:

Mr. Benko stated the house can still be used as a single family residence and have a detached garage without the granting of a variance.

Mr. Benko stated the variances may be substantial. The garage is 38% larger and 20% taller than code allows.

Mr. Benko stated the adjacent properties may be impacted as the structure is beyond code allowances. Mr. Benko stated this could generally be mitigated with buffer planting. Mr. Benko stated there is existing vegetation growth around the edge of the property which would shield much of the garage. Mr. Benko stated the property to the rear of the subject (fronts E. Friendship Street) is a long narrow lot. Mr. Benko stated the garage would be located at a distance of approximately 130 feet from the rear of that house.

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

Mr. Benko stated the code requirements have been in effect for a significant time period.

Mr. Benko stated the proposed detached garage could be reduced in size to 744 sq. ft. with a max height of fifteen feet.

Mr. Benko stated the intent of the requirements is to prevent accessory structures from dominating subject sites and neighboring properties.

Present for the case was Tom Cifranic, contractor, 316 N. Harmony Street, Medina. Mr. Cifranic stated the gable will face the same way the gable on the house faces. Mr. Cifranic stated the roof material and siding will all match the house.

Mr. Benko stated garage heights are calculated by the mid-point between the top of the walls and the peak per code. Mr. Benko stated the mid-point on this application is 18 feet. Mr. Benko stated the actual peak will be 24 feet which is why a variance is being requested.

Mr. Klink asked the reason for such a large building. Mr. Cifranic stated he believes the owner would like storage in the upper portion truss style attic.

Mr. Humpal asked if there will be driveway access to the garage. Mr. Mendel stated yes and he demonstrated on the existing conditions photo.

Mr. Williams stated the intent of the requirement is to prevent accessory structures from dominating the subject site. Mr. Williams stated he feels it is a very large building and feels it will dominate the site. Mr. Cifranic stated you will not be able to see the garage from certain angles on the street. Mr. Cifranic stated it is visible if you are approaching from the south heading north on North Harmony. Mr. Cifranic stated the intent was to have the gable facing the street and have the structure look as much like the house as possible. Mr. Williams stated he feels the scale is still too large.

Mr. Cifranic stated it is a paved driveway right now but it will be replaced with concrete. Mr. Cifranic stated everything is upgraded from the street all the way to the garage.

Mr. Benko stated he discussed doing a hard surface drive with Mr. Cifranic. Mr. Benko stated it is currently old asphalt that looks like a gravel drive.

Mr. Klink asked if the owner would consider reducing the size of the structure. Mr. Cifranic stated that would be up to the homeowner. Mr. Humpal asked for comments from the public.

Russ Kunkler, the property owner stated he is requesting the building be this size because they have a bungalow house with no closets or storage space. Mr. Kunkler stated he would like to use the building to store their things. Mr. Kunkler stated there is an existing paved drive that will be concreted. Mr. Klink asked Mr. Kunkler if he would consider reducing the size of the building. Mr. Kunkler stated he has three vehicles that he would like to park inside the building and if the building is smaller, they will not fit. Mr. Humpal stated he is referring to the height being reduced. Mr. Kunkler stated the height is needed to be able to store their belongings above the garage area. Mr. Kunkler stated he would also like to have a workshop in the building. Mr. Humpal stated he recalls recently approving a 16 ft. height for a garage on E. Smith.

Mr. Williams stated there is a similar size structure to the southeast so he does not feel it will negatively affect the neighborhood. Mr. Williams stated he would like to have buffering at the Planning Director's discretion.

Mr. Williams made a motion to approve a Variance request to section 1113.05(L)(2)(A)(7) of the Planning and Zoning Code to permit a proposed 1024 sq. ft. detached accessory building in excess of the maximum allowed 744 sq. ft. square footage allowance for the lot and a Variance request to section 1113.05 (L)(2)(A)(5) of the Planning and Zoning Code to permit an accessory structure that is 18 ft. in height where 15 ft. tall accessory structures are allowable by code, subject to the Planning Director's discretion for landscape buffering. Mr. Williams stated the approval is based on the finding that it will not change the character of the neighborhood.

Mr. Klink seconded the motion.

Vote:  
Klink

Y

Williams	<u>Y</u>
Humpal	<u>Y</u>
Bigam	<u>abstain</u>
Approved	3-1 abstention

2. Z15-06      427 N. Court      Nick Sarai      VAR  
 Jonathan Mendel gave a brief overview of the case. Mr. Mendel stated this is a variance request to Section 1147.04(D) to permit the existing nonconforming pole sign to remain. Mr. Mendel stated the site is located at the southwest corner of W. Union Street and N. Court St. Mr. Mendel stated the subject property is surrounded by M-U zoning to the south and east and R-3 zoning to the north and west.

Mr. Mendel stated on March 12, 2015, the Board of Zoning Appeals reviewed a plan for the reconstruction of the existing gas station at 427 N. Court St. Mr. Mendel stated there were several variances required to allow the expansion of the convenience store portion of the use, which were approved except for the variance to keep the existing pole sign at the northeast corner of the site. Mr. Mendel stated this variance request was continued by the applicant to allow for time to investigate options to attain compliance with all or part of the code requirements for ground signage.

Mr. Mendel stated after attempts by staff to contact the applicant to work together to develop a plan that meets the intent of Section 1147.07(D), which requires the compliance of nonconforming signs when a property goes through Site Plan review, staff was unable to connect with the applicant after several attempts since the March 12, 2015 meeting. Mr. Mendel stated after contacting the applicant regarding the June 11, 2015 meeting date, staff was informed that the applicant wishes to proceed with the variance request to retain the existing pole sign as it currently stands. Mr. Mendel stated there was discussion of alternative ways to gain closer compliance with the sign code where the sign would need to be no larger than 40 sq. ft., 6 ft. tall, and set back at least five feet from the two front property lines since it has two frontages, and then 100 sq. ft. landscape area. Mr. Mendel stated the site is very tight and there is not space to meet all those standards. Mr. Mendel stated this is why the case was continued.

Mr. Mendel stated the Planning and Zoning Code describes the responsibilities of the Board of Zoning Appeals as such: Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the provisions of this chapter, the Board shall have the power, in a specific case, to interpret any such provision in harmony with its general purpose and intent so that the public health, safety, and general welfare may be secured and substantial justice done.

- 1. Construction of a conforming sign may not obstruct the vision of motorists, but staff was not consulted to determine alternatives.*

Mr. Mendel stated he attempted to contact the applicant two times before tonight's meeting to discuss alternatives to come closer to compliance. Mr. Mendel stated he was not able to meet with the applicant.

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

Mr. Mendel stated a conforming sign would not be blocked by from the sight of passing motorists due to any existing private or public structures or improvements. Mr. Mendel stated staff was not consulted to determine alternatives.

2. ***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 construction of a conforming sign may affect efficient circulation around the existing gas pumps and general site.

3. ***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 existing pole sign would not be more appropriate in scale with the existing site, but simply maintain a sign that has been on the site for an extended period of time.

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

Mr. Mendel stated the exception should not adversely impact the character or appearance of the subject site or neighborhood because it would simply maintain the status quo.

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

Mr. Mendel stated the variance sought is a 100% variance from the code requirement since the code requires complete compliance with the current sign code requirements which prohibit pole signs for this size/type of property/use.

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

Mr. Mendel stated the spirit and intent behind Section 1147.04(D) requiring the compliance of nonconforming signs was an effort to find an appropriate trigger for removing nonconforming signs within the community. Mr. Mendel stated using site plan review as a trigger for compliance can be justified under the presumption that the cost of sign compliance may be minor in relation to the overall project budget.

Mr. Mendel stated since the March 12th Board of Zoning Appeals meeting, he has discovered another variance that will be needed as a part of the whole project that was not addressed in the staff report or the May meeting. Mr. Mendel stated the lot at 110 W. Union is proposed to be reduced in width to transfer land from one lot to the other. Mr. Mendel stated this is to allow the construction of the new building. Mr. Mendel stated 110 W. Union is an existing non-conforming lot which is buildable as it sits but you cannot create a new sub-standard lot by reducing the size which requires a variance. Mr. Mendel stated he spoke with the applicant's representative this afternoon to inform them of the situation. Mr. Mendel stated the required variance was not publically advertised at the March 12<sup>th</sup> meeting or for this meeting. Mr. Mendel stated it needs to be publically advertised which would make the variance come before the board in July. Mr. Mendel stated a special meeting can be planned if requested by the applicant. Mr. Mendel stated the board may rule on the sign variance request this evening if they would like and the new variance can be added to the case and the meeting can be continued to allow the new variance to be publically advertised and the applicant would not need to pay for a new application.

Present for the case was Norman Saeger, Saeger Architectural Services. Greg Huber, Law Director, stated he considers all the variance requests to be tied together.

Mr. Saeger was sworn in by the Court Reporter. Mr. Saeger stated the owner would like to keep the sign as it is and would like to add the new variance request to the current application and bring it before the board in July.

Mr. Mendel stated the board can vote on the sign variance this evening and continue the case to July for the new variance.

Mr. Bigam stated he does not see any other safe location for the sign on the site. Mr. Bigam stated he would be inclined to see the sign stay in its current location.

Mr. Klink asked if there was a reason the applicant and the city were not able to get together to discuss the sign. Mr. Mendel stated he contacted Mr. Saeger who is listed as the applicant on two occasions between March 12, 2015 and June 11, 2015. Mr. Mendel stated he did not receive any response. Mr. Saeger stated it was because the applicant would like to keep the sign they have and a smaller, lower sign would not be as visible and moving it would block visibility when coming out of the car wash.

Mr. Williams stated there is no part of the sign that is in conformance and he is not inclined to grant this variance because it is a 100% variance and staff gave the applicant

the opportunity to contact them, which the board requested the applicant to do, to come up with a compromise to bring the sign more in compliance.

Mr. Saeger stated the applicant agrees to table both variances until the July meeting and will meet with staff before then.

Present for the case was property owner Nick Sarai. Mr. Sarai stated there is not a better place to move the sign. Mr. Klink stated there needs to be dialogue with the city and the applicant and a refusal to do so by the applicant is not in the spirit of the intent.

Mr. Saeger stated they agree to table the case until July.

Minutes: Mr. Humpal waited for Mr. Bigam to arrive at 5:50 p.m. to approve the minutes. Mr. Williams made a motion to approve the May 14, 2015 minutes as submitted. The motion was seconded by Mr. Bigam.

Vote:

Humpal	<u>Y</u>
Bigam	<u>Y</u>
Klink	<u>Y</u>
Williams	<u>Y</u>
Approved	4-0

3. Z15-15 944 Old Farm Trail Zach Schweikart VAR

Mr. Benko gave a brief orientation to the case. Mr. Benko stated this is a variance request to Section 1155.01 (C) of the Planning and Zoning Code to allow a five foot tall fence in the front yard when a three feet tall fence is permitted by code.

Mr. Benko stated the site is located on the southwest side of the Old Farm Trail and Yorkshire Drive Intersection. Mr. Benko stated the property is east of Guilford Blvd and west of Timber Trail. The site is adjacent to residential zoning on all sides.

Mr. Benko stated the applicant has proposed a 4-5 feet tall open split rail fence for the rear yard that continues into the side yard and stops five feet from the sidewalk. Mr. Benko stated the fence will have 14 gauge welded wire on the inside of the fence. Mr. Benko stated the property is located on a corner lot, per code section 1113.05 (D), properties are required to meet the minimum front yard setbacks facing both streets. Mr. Benko stated the applicant has submitted a variance request to section 1155.01 (c) of the Planning and Zoning Code to allow a five foot tall fence in the front yard.

Mr. Benko stated the existing site can still be utilized as a single family residential dwelling without the granting of a variance.

Mr. Benko stated the fence is two feet or 66% taller than what is allowed by code.

Mr. Benko stated the essential character of the neighborhood may not be altered. Mr. Benko stated the fence is an open split rail fence design which may mitigate some of the visual impact on the neighborhood. Mr. Benko stated the top rail of the split rail fence will be closer to four feet in height which again may lessen the visual impact of the fence.

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

Mr. Benko stated the zoning ordinances were in effect when the applicant decided to build the fence.

Mr. Benko stated the fence could be placed thirty feet off of the sidewalk fronting Yorkshire Drive which would meet the required setbacks for fences on a corner lot or the fence could be reduced in size to three feet.

Mr. Benko stated the intent is to maintain an open look in front and corner lot side yards throughout the City by limiting fence heights within the front yards to maximum 3 feet tall, open designs.

Present for the case was property owner Zach Schweikart. Mr. Schweikart stated they purchased the house approximately 1.5 years ago and did not realize they could not put a fence on the corner lot. Mr. Schweikart stated he spoke with the city to get the requirements and found the fence could only be 3 feet high. Mr. Schweikart stated they would like to go higher than 3 feet for the safety of their one year old child. Mr. Schweikart stated they are proposing a split rail fence with mesh wiring. Mr. Schweikart stated the fence would be past the tree line, sidewalk, and five feet from the sidewalk.

Mr. Benko stated he does not have a photo of the proposed fence but it will be a standard 3 rail split rail fence with 14 gauge vinyl coated wire in black.

Mr. Humpal asked for comments from the public. Sally Fraley of 960 Old Farm Trail commented that she lives across the street from the subject property. Ms. Fraley stated she thinks the proposed fencing would be very pretty. Ms. Fraley stated she has the same type of fence on her property and it is very attractive.

Mr. Klink made a motion to approve a variance to Section 1155.01 (C) of the Planning and Zoning Code to allow a five foot tall fence in the front yard at 944 Old Farm Trail when a three feet tall fence is permitted by code. Mr. Klink stated the approval is based on the finding that the essential character of the neighborhood would not be altered due to the design and open nature of the proposed fence.

The motion was seconded by Mr. Bigam.

Vote:

Humpal	<u>Y</u>
Bigam	<u>Y</u>
Williams	<u>Y</u>
Klink	<u>Y</u>
Approved	4-0

4. Z15-16 975 Mallet Hill Ct. Lindsay Hathaway VAR

Mr. Benko gave a brief orientation to the case. Mr. Benko stated this is a Variance request to Section 1155.01 (C) of the Planning and Zoning Code to allow a six foot tall fence in the front yard when a three foot tall fence is permitted by code.

Mr. Benko stated the site is located on the northwest side of the half cul-de-sac on Mallet Hill Court. The site is adjacent to residential zoning on all sides.

Mr. Benko stated the applicant has proposed a six feet tall fence for the front yard that stops five feet from the sidewalk. Mr. Benko stated three foot tall fences in the front yard are allowed by code. Mr. Benko stated the fence would be a wooden privacy style fence and, per the applicant, would be installed to impede basketballs from going onto neighboring properties.

Mr. Benko stated the existing site can still be utilized as a single family residential dwelling without the granting of a variance.

Mr. Benko stated the fence is three feet or 100% larger than what is allowed by code.

Mr. Benko stated the essential character of the neighborhood may be altered. This would be the only fence that exceeds three feet tall within five feet of the sidewalk. At the May 14, 2015 BZA meeting, a fence height variance was granted for a six foot tall fence in a secondary front yard located at 1131 Mallet Hill Court. This property is located across the street.

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

Mr. Benko stated the zoning ordinances were in effect when the applicant decided to build the fence.

Mr. Benko stated the fence could be reduced in size to three feet; however, this would offer little relief from basketballs going onto adjoining properties.

Mr. Benko stated the intent is to maintain an open look in front yards throughout the City by limiting fence heights within the front yards to maximum 3 feet tall design.

Mr. Mendel passed out a letter from an adjacent property owner at 1100 Mallet Hill Court, Robert Neubauer who was not able to attend the meeting this evening.

Present for the case was property owner Lindsay Hathaway. Ms. Hathaway stated the purpose of the fence is to prevent the children's basketballs from going into the neighbor's yard. Ms. Hathaway stated they have been having trouble with the neighbor over the past year. Ms. Hathaway stated the neighbor is frightening to her children and now play in other yards. Ms. Hathaway stated she is trying to come up with a solution to accommodate the neighbor and not have further problems.

Ms. Hathaway stated a 3 foot fence is not tall enough to stop the problem. Ms. Hathaway stated she has had the police out to her house.

Mr. Bigam stated he feels the variance will not fix the problem she is having with the neighbor. Ms. Hathaway stated the basketball hoop is 26 feet back from the road and 52 feet from the corner of the garage to the sidewalk. Ms. Hathaway stated it is cemented in. Mr. Klink asked if there is a neighborhood covenant against fences. Ms. Hathaway stated she is not aware of any neighborhood covenants.

Mr. Williams asked if there is some type of middle ground that can be reached rather than a five foot fence all the way down the sidewalk. Mr. Williams stated this is a permanent solution to something that is hopefully not a permanent problem. Mr. Williams suggested going with a 3 foot fence for several feet back from the sidewalk which would increase visibility and decrease the starkness of the appearance. Ms. Hathaway stated she and her husband discussed that with Mr. Benko and they are willing to lower the fence at the front and stagger the height going back.

Mr. Benko stated he discussed with Ms. Hathaway and her husband, having the sidewalk at 3 feet up to 10 feet off the sidewalk or even 15 feet. Mr. Williams stated that would provide at least 10 feet beyond where the basket is. Ms. Hathaway stated she measured it out and if they any more than 15 feet, it would accomplish what they are looking for. Ms. Hathaway stated she would be willing to do that. Mr. Humpal asked for a drawing of the appearance of the fence. Ms. Hathaway stated she does not have a drawing but it will be a standard privacy fence with quarter inch gaps between the slats and dog ear tops.

Mr. Bigam asked if the basketball hoop could be relocated over the garage. Ms. Hathaway stated she spent \$1,000 on the hoop and there is no way to retrofit it onto the garage. Ms. Hathaway stated even if it was mounted on the garage, the ball would still go into the neighbor's yard because of the proximity of the yards.

Mr. Mendel stated he passed out the letter from Mr. Neubauer and asked Mr. Humpal if he would like to read it or summarize it so it gets into the record. Mr. Humpal summarized the letter that was sent 6/8/15 which was an objection from the neighbor. Mr. Humpal stated that Mr. Neubauer expressed that a 3 foot fence would be adequate and he is concerned that a taller fence would negatively impact his property value. Mr. Neubauer also stated in his letter that a six foot fence would obstruct his visibility of the street and sidewalk from his front yard. Mr. Humpal stated there was a follow-up e-mail from Mr. Neubauer dated June 11, 2015 to Mr. Mendel which suggests alternatives to a fence which are posted on websites sited in the e-mail.

Mr. Williams asked if the variance could be altered in a motion. Mr. Mendel stated it could be stated a six foot fence no less than 15 feet from the sidewalk on Mallet Hill Court.

Mr. Williams made a motion to approve a variance to Section 1155.01(C) of the Planning and Zoning Code to allow a six foot tall fence in the front yard when a three feet tall fence is permitted by code. The approval is subject to the fence being no less than 15 feet from the inside edge of the sidewalk on Mallet Hill Court. Mr. Williams stated the approval is based on the finding that the essential character of the neighborhood would not be altered.

Mr. Klink seconded the motion.

Vote:

Humpal	<u>Y</u>
Bigam	<u>N</u>
Williams	<u>Y</u>
Klink	<u>N</u>
Denied	2-2

5. Z15-17 634 N. Huntington Echelon Sr. Living Group VAR

Mr. Mendel gave a brief orientation to the case. Mr. Mendel stated this is a request for a variance to Section 1153.04(A)(1) of the Planning and Zoning Code to allow the proposed building and site activities to be 40 feet from the north (side) property line and 40 feet from the front (east) property line instead of the minimum required 100 feet.

Mr. Mendel stated the subject site is located in the 600 block of North Huntington Street and comprises 9 acres with frontage on N. Huntington St. and includes the existing dormitory building that formerly housed the Pythian Sisters.

Mr. Mendel stated the applicant proposes a new 83,000 sqft 100 unit assisted living/memory care facility. Mr. Mendel stated the proposed building, parking and vehicle circulation will occupy approximately 132,000 sqft of the northeast portion of the 9 acres. Mr. Mendel stated the applicant intends to keep the existing dormitory building for future use, but will not be using it at this time.

Mr. Mendel stated the project requires a variance for the proposed 40 foot building setback from the north and east property lines where a minimum of 100 feet is required by Section 1153.04(A)(1) of the Planning & Zoning Code.

Mr. Mendel stated the site is zoned R-2 and the proposed development requires conditional zoning and site plan review and approval as an "Assisted Living/Nursing Home" use and will be reviewed by the Planning Commission at the June 11, 2015 meeting.

Mr. Mendel stated due to the location of the existing creek and steep grades in the southern third of the site, meeting the 100 foot setback would require comprises to the extent of the exterior and interior decorative outdoor open space and/or necessitate reducing the size of the building.

Mr. Mendel stated although the variance is a 60% reduction to the minimum required (40 feet versus 100 feet), the building will comply with the base minimum setback of 40 feet in the underlying R-2 zoning district.

Mr. Mendel stated the essential character of the neighborhood should not be altered. Mr. Mendel stated the proposed building and parking areas at the front (east) of the site will be nicely landscaped and the property adjacent to the north will be a large front yard for a proposed 131 unit, 3-story apartment building.

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

Mr. Mendel stated the applicant may not have been aware of the restriction at the time of executing a purchase agreement, but the plan was developed by professional land development consultants with the knowledge of the restriction.

Mr. Mendel stated due to the location of the creek and the steep grades on the southern third of the site, there may not be a method other than a variance to feasibly obviate the owner's predicament without comprising the quality of the development plan.

Mr. Mendel stated the spirit and intent of the zoning requirement should be observed and substantial justice done by the granting of the variance because the building will have minimal impact on adjacent properties and the neighborhood in general.

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 1153.04(a)(1).

Present for the case was Jeff Neidigh, Chief Estimator, from The Douglas Company. Mr. Neidigh stated another obstacle on the site is a power line that runs parallel to the creek. Mr. Neidigh stated the steep grade is an obstacle also.

Mr. Mendel gave a brief orientation to the site. Mr. Mendel stated there is access to the structure in the back of the property. Mr. Williams asked if the bridge sidewalk over Bradway Creek will be updated along with the plan. Mr. Neidigh stated it is not in the plan to upgrade the sidewalk.

Mr. Bigam asked if the drive is wide enough onto Huntington to handle the traffic. Mr. Mendel stated the drive and circulation on the site is a site plan question for Planning Commission. Mr. Mendel stated it meets all the minimum requirements for two way traffic which is 24 feet. Mr. Mendel stated the parking spaces are all the appropriate sizes and the drives coming out are meeting all the minimum requirements.

Mr. Williams asked why you would not push the building west and have the parking to the south or east side. Mr. Neidigh stated moving it west would put it closer to the dormitory building and the grade would need to be built up and would require moving a lot of dirt, causing more grade to the north and to the south. Mr. Neidigh stated they balanced to where they can do the project without impacting everything around it.

Mr. Humpal asked for comments from adjoining property owners. There were no adjoining property owners present.

Mr. Klink asked the type of buffering will be put around the drive and the parking. Mr. Mendel stated the landscape plan shows a buffer of low shrubs and decorative trees. Mr. Mendel stated it includes fruit and evergreen trees. Mr. Mendel stated in the frontage along Huntington there are shade trees and evergreens and low shrubs being proposed.

Mr. Williams asked if the large maple trees on the roadside very northeast corner will be retained. Mr. Mendel stated yes, they will remain.

Mr. Bigam made a motion to approve a variance to Section 1153.04(A)(1) of the Planning and Zoning Code to allow the proposed building site activities to be 40 feet from the north (side) property line and 40 feet from the front (east) property line instead of the minimum required 100 feet at 634 N. Huntington Street based on the finding that the granting of the variance will not adversely affect the rights of adjacent property owners and also the variance will be consistent with the general spirit and intent of the code.

The motion was seconded by Mr. Williams.

Vote:

Humpal	<u>Y</u>
Bigam	<u>Y</u>
Williams	<u>Y</u>
Klink	<u>Y</u>
Approved	4-0

6. Z15-18                      865 W. Liberty St.      Fechko Excavating, Inc.      APPEAL

Mr. Mendel stated this is a request by Fechko Excavating at 865 West Liberty Street, Medina, Ohio for an Appeal of the Planning Director's Administrative Decision. Mr. Mendel stated the site at which it is at and where the applicant's business address is, is zoned I-1 Industrial. Mr. Mendel stated the specific site location is bounded by State Road to the east, Progress Drive to the north, and West Liberty to the south.

Mr. Mendel stated the site is owned by Fechko Excavating which has their company offices immediately to the west at 865 West Liberty Street.

Mr. Mendel stated in April of 2015, the staff discovered that the applicant had been operating a concrete recycling/crushing operation on land they had purchased immediately to the east of their business address.

Mr. Mendel stated once this operation was discovered, staff consulted with the applicant to review the Planning and Zoning Code and conduct a site visit during operation. Mr. Mendel stated after performing the above investigation, staff concluded that the concrete recycling/crushing operation would be defined as a "Manufacturing-Heavy" which in Section 1105.097 of the Planning and Zoning Code. Mr. Mendel stated he has the section listed verbatim in the staff report which is:

**1105.097 MANUFACTURING, HEAVY**

"Heavy manufacturing" means a building or land used for the assembly, fabrication or processing of goods and materials using processes that ordinarily create smoke, noise, fumes, odor, glare or potential safety hazards (e.g. explosive materials processing).

Mr. Mendel stated the particular section above defines it the most applicable land use which is the land uses processing that ordinarily create noise, and to his understanding, it also creates dust, which is the equivalent to smoke. Mr. Mendel stated smoke and dust are equivalently the same.

Mr. Mendel stated staff determined that this definition applied after accompanying a representative of the applicant during a site visit when the crushing/recycling facility was operating. Mr. Mendel stated he did witness dust or smoke and loud noise emanating from the operation.

Mr. Mendel stated we experienced the operation from each direction available from adjacent properties, and therefore determined that the noise level is coming from the operation which ordinarily creates noise and smoke or dust.

Mr. Mendel stated he considers under Section 1107.08(I)(4) of the Planning and Zoning Code outlines the standards of review for the Board of Zoning Appeals when reviewing an appeal of an administrative decision. Mr. Mendel stated the Board shall weigh the following factors to determine whether an appeal should be granted and the zoning official order is to be reversed. Mr. Mendel reviewed the standards as stated below:

*A. Was the decision arbitrary or capricious; or*

Mr. Mendel stated Staff's analysis of the concrete recycling/crushing land use was not arbitrary or capricious, because staff conducted a logical and reasonable process for analyzing the land use in relation to the Planning and Zoning Code. Mr. Mendel stated after reviewing the I-1 zoning district permitted and conditionally permitted use tables (Sections 1141.02 & 1141.03), reviewing the "Manufacturing, Heavy" (Section 1105.097) versus "Manufacturing, Light" (Section 1105.098), and witnessing the operation from possible vantage points immediately to the west, north

and south, staff confirmed that the operation uses processes that ordinarily create noise and smoke.

*B. Was the decision based on an erroneous finding of a material fact; or*

Mr. Mendel stated the administrative decision was not based on an erroneous finding of material fact. Mr. Mendel stated Staff specifically witnessed and heard the operation use processes that ordinarily create noise.

*C. Was the decision based on erroneous interpretation of this Ordinance or zoning law; or*

Mr. Mendel stated Staff decision was not based on erroneous interpretation. Mr. Mendel stated the applicant's land use is not explicitly listed (as "concrete recycling/crushing") in either the permitted or conditionally permitted use table in the I-1 zoning district (Sections 1141.02 & 1141.03). Mr. Mendel stated since any use of land must be classified by the Planning and Zoning Code there are the two manufacturing categories (heavy and light) which are specifically intended to encompass land uses not specifically listed in the I-1 zoning district use tables or defined in the Definitions (Chapter 1105) portion of the Planning and Zoning Code

*D. Did the decision constitute an abuse of discretion.*

Mr. Mendel stated Staff's administrative decision did not constitute an abuse of discretion. Mr. Mendel stated the interpretative discretion provided by the Planning and Zoning Code to staff was not abused in this case, because staff used a logical and reasonable method for analyzing Planning and Zoning Code as it relates to the zoning categorization of the applicant's concrete recycling/crushing land use.

Mr. Mendel stated the BZA must weigh the above five factors for the requested appeal and determine whether to reverse staff administrative decision to define the applicant's concrete recycling/crushing land use as "Manufacturing, Heavy" as defined in Section 1105.0987 of the Planning and Zoning Code.

Mr. Humpal asked if the applicant is present. Greg Huber, City Law Director, stated there are some questions he would like to ask Mr. Mendel before beginning to review the case. Mr. Humpal agreed.

Mr. Huber asked Mr. Mendel how he became aware of an issue with respect to the concrete crushing operation that is operated by the Fechko Businesses.

Mr. Mendel stated he became aware of it at the end of April, 2015, after complaints were made about and in relation to the operation. Mr. Mendel stated the complaints were made by the adjacent property owner regarding the impact that the use was having on their business.

Mr. Huber asked Mr. Mendel who the adjoining property owner was.

Mr. Mendel stated Firedex, which is located in Progress Drive.

Mr. Huber asked Mr. Mendel if he could show the board by pointing out on the diagram on the overhead, the panel where Firedex is located.

Mr. Mendel demonstrated on the overhead projector, which building is Firedex,

Mr. Huber asked Mr. Mendel if he also received complaints with respect to dust from any other adjacent property owner.

Mr. Mendel stated he has received comment that adjacent property owners have witnessed dust and noise coming from the use, the concrete/recycling use at the Fechko property.

Mr. Huber stated, as he understands it, the Fechko business has argued that they have been running this operation since what, 2009?

Mr. Mendel stated that is his understanding after discussing it with Greg Petersen with Fechko.

Mr. Huber stated if this is defined as "Heavy Manufacturing", then essentially, that would require an analysis of a Conditional Use Permit, is that correct?

Mr. Mendel stated Heavy Manufacturing is a Conditionally Permitted Use in the I-1 zoning district, yes.

Mr. Huber asked, under our current zoning code, what year did we pass that?

Mr. Mendel stated the current zoning code was passed in July of 2014.

Mr. Huber asked Mr. Mendel if they were operating this back in 2009, would it have been under our Old Zoning Code.

Mr. Mendel stated it would have been, yes.

Mr. Huber asked if, under our old zoning code, did they have any permit or use to run this operation.

Mr. Mendel stated he found no record of any zoning certificate approval either by a regulatory board or the Planning Department in particular.

Mr. Huber asked, under our old code, would we be required to classify this and ask for a Conditional Use Permit?

Mr. Mendel stated it would have fallen under a “catch all” encompassing use in the use table under the old I-1 zoning district and would have required a Conditional Use approval by the Planning Commission.

Mr. Huber asked Mr. Mendel, “In your opinion, would this use require your review even under our old code?”

Mr. Mendel asked Mr. Huber to repeat the question.

Mr. Huber asked Mr. Mendel, “In your opinion, would this use require your review even under our old code?”

Mr. Mendel stated this would have required a Conditional Use review and approval by the Planning Commission under the old code.

Mr. Huber stated, “So this has not occurred up to this point at all, correct?”

Mr. Mendel stated he has no record that it occurred within the last six years.

Mr. Huber asked, “Until receiving the complaint, were you even aware that this use was happening?”

Mr. Mendel stated he was not.

Mr. Huber asked Mr. Mendel if he could show the Appeals Board on the diagram, as he understands it, Fechko put in a road, not a road, but a driveway, is that correct. Mr. Huber asked Mr. Mendel to indicate on the diagram where that goes.

Mr. Mendel, using the diagram, stated it is effectively right in this area here (Mr. Mendel pointed out on the diagram on the overhead projector).

Mr. Huber asked if that is a heavy gravel driveway.

Mr. Mendel stated it is a heavy gravel driveway.

Mr. Huber stated, as he understands it, this whole operation takes large concrete slabs, the slabs are fed into a concrete crushing machine, and the concrete crushing machine is run by an engine, is that right?

Mr. Mendel stated that is his understanding, yes.

Mr. Huber stated “then aggregate comes out the other end”.

Mr. Mendel stated yes.

Mr. Huber stated it is all open, it is not enclosed in any way.

Mr. Mendel stated it is, yes, the hopper to insert the raw material and the aggregate coming out on a conveyor is exposed.

Mr. Huber stated that driveway they put in runs off of Progress Drive to the north of this, correct?

Mr. Mendel stated yes.

Mr. Huber asked when that was put in.

Mr. Mendel stated his understanding, after speaking with Greg Petersen from Fechko, is that it was put in the fall of 2014.

Mr. Huber asked, prior to that, how were they gaining access to this?

Mr. Mendel stated his presumption is that they were coming off of West Liberty Road through their 865 facility and coming into the back.

Mr. Huber asked, if they put a driveway in off of Progress Drive, don't our ordinances require a curb cut?

Mr. Mendel stated they do.

Mr. Huber asked if the city has any grant of a curb cut for this driveway.

Mr. Mendel stated the city does not have a record of a curb cut permit approval.

Mr. Huber asked if they are heavy trucks that are driving over this curb.

Mr. Mendel stated his understanding is they are construction grade, large dump trucks.

Mr. Huber asked if the operation of the heavy trucks over the city's curb that has never been cut, caused damage to the curb.

Mr. Mendel state he has witnessed damage to the curb that is out on Progress Drive.

Mr. Huber asked Mr. Mendel if he received information from Firedex with respect to the filters that they use. Mr. Huber asked Mr. Mendel to tell the board a little bit about what he has received and what the problem Firedex has from his own investigation.

Mr. Humpal stated Mr. Williams has mentioned that he is questioning whether he has a conflict since he has a business client relationship with Firedex. Mr. Humpal asked Mr. Huber if Mr. Williams should recuse himself from the discussion.

Mr. Huber stated he does not know what the nature of the relationship is.

Mr. Williams stated they are clients of his business. Mr. Huber asked Mr. Williams what his business is. Mr. Williams stated "Williams on the Lake".

Mr. Huber asked if he caters to them.

Mr. Williams stated that is correct.

Mr. Huber stated he will leave that up to Mr. Williams.

Mr. Williams stated he does not have an inherent relationship but he wanted to check with Mr. Huber to make sure. Mr. Williams stated he was unaware prior to this meeting and he apologized, he would have recused himself before beginning the proceedings.

Mr. Huber stated it is just a catering business, he does not think it does not bear on this issue so much, and from his point of view, he would have no objection to Mr. Williams hearing this case. Mr. Huber stated he is not sure how the people from Fechko would feel, they can weigh in if they want to.

Mr. John Armstrong from Firedex stated from Firedex's standpoint, they have no issue.

Present for the case was Steven Beranek, Esq. (General Counsel) from Fechko Excavating and also Greg Petersen, General Manager at Fechko Excavating.

Mr. Humpal asked if the question of a conflict was resolved. Mr. Beranek stated the one question he would have is what is Mr. Williams' position at Williams On The Lake. Mr. Williams stated he is the owner.

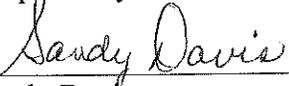
Mr. Beranek stated, with all due respect, he would have a problem with that.

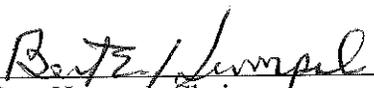
Mr. Humpal stated with three members remaining on the board this evening, it would take all three affirmative votes to approve a request. Mr. Humpal asked the gentlemen from Fechko if they are comfortable with that. Mr. Petersen stated they are not comfortable.

Mr. Humpal stated they can postpone the case until next month. Mr. Petersen stated they will postpone. Mr. Humpal stated staff may find the time for a special meeting between now and the July 9, 2015 meeting.

Having no further business, the meeting was adjourned.

Respectfully submitted,

  
\_\_\_\_\_  
Sandy Davis

  
\_\_\_\_\_  
Bert Humpal, Chairman