



# CITY of MEDINA

## Board of Zoning Appeals

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### Board of Zoning Appeals

Meeting Date: October 23, 2014

Meeting Time: 5:30 pm

Present: Bert Humpal, Earl Harris, Jim Bigam, Mark Williams, Jonathan Mendel, (Community Development Director), Justin Benko (Associate Planner), Sandy Davis (Administrative Assistant)

Absent: Kris Klink, Mark Pinskey

Minutes: The minutes of the September 16, 2014 meeting were presented for approval. Mr. Bigam made a motion to approve the minutes as submitted. Mr. Williams seconded the motion.

Vote:

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

New Business:

1. Z14-13 N. Jefferson Verizon Wireless VAR

Justin Benko gave a brief overview of the case. Mr. Benko stated the application is for Claggett Middle School/Medina City Schools Soccer Stadium located on N. Jefferson Street. Mr. Benko stated the request is for the following:

1. A variance from Section 1146.05(E) of the planning and zoning code to allow construction of the facility without complying with the site landscaping requirements.
2. A variance from Section 1146.05(L) of the planning and zoning code to permit a fence that is 4 ft. in height when an 8 ft. security fence is required by code.

3. A variance from section 1146.05(M) of the planning and zoning code to permit a 2250 sq. ft. accessory structure/ equipment shelter when a maximum 700 sq. ft. accessory structure/ equipment shelter is permitted by code.
4. A variance from section 1113.05 (L) of the planning and zoning code to permit an accessory structure to be located in the front yard when accessory structures located in the rear yard are required by code.
5. A variance from section 1130.05 of the planning and zoning code to permit a 37 ft. front yard setback when a 50 ft. front yard setback is required by code.

Mr. Benko stated the parcel, Claggett Middle School Memorial Stadium, is located at the northeast corner of the N. Jefferson Street and E. Union Street intersection. Mr. Benko stated the portion of the site being referenced is the southwest corner of the site. Mr. Benko stated the site is adjacent to public facilities or residential zoning on all sides.

Mr. Benko stated the applicant has entered into a lease agreement with Medina City Schools for the collocation of cell antennas for Verizon Wireless on a newly constructed light pole at the Claggett Middle School Memorial Stadium. Mr. Benko stated the soccer field lights are currently 70' tall. Mr. Benko stated the applicant proposes replacing one 70' light pole with a 100' free standing light pole with the collocation of twelve cell antennas at the top of the light pole. Mr. Benko stated the actual lights will remain at their current height of 68 feet. Mr. Benko stated the applicant has proposed the construction of a 2250 sq. ft. equipment shelter. Mr. Benko stated the equipment shelter will replace the school district's current equipment shelter and will be large enough to house up to 3 different carriers. Mr. Benko stated the proposed shelter will also have a separate, locked entrance to allow for storage for Medina City Schools. Mr. Benko stated wireless communication facilities are conditionally permitted within the city and require approval by the Planning Commission. Mr. Benko stated the applicant has submitted five variance requests before the Board of Zoning Appeals. Mr. Benko stated the variances pertain to cell facility setbacks, accessory structure size, and landscaping requirements. Mr. Benko stated an explanation of the variances are to follow:

1. A variance from Section 1146.05(E) of the planning and zoning code to allow construction of the facility without complying with the site landscaping requirements. *Section 1146.05(E) requires a landscape buffer and landscaping around the facility. Due to the limited space of the site, the applicant is seeking relief from this code section because the landscaping may encroach on the walking track area.*
2. A variance from Section 1146.05(L) of the planning and zoning code to permit a fence that is 4 ft. in height when an 8 ft. security fence is required by code. *Section 1146.05(L) requires a security fence that is 8'-10' high around a cellular facility. There is an existing 4 feet fence around the entire soccer field.*

3. A variance from section 1146.05(M) of the planning and zoning code to permit a 2250 sq. ft. accessory structure/ equipment shelter when a maximum 700 sq. ft. accessory structure/ equipment shelter is permitted by code. *Section 1146.05 (M) allows for a 700 sq. ft. accessory structure at the site. The applicant has proposed a 2250 sq. ft. accessory structure to house necessary equipment and is large enough to house equipment for two additional carriers. 750 of the 2250 sq. ft. would store for Medina City Schools. The proposed building is similar in size and character to the existing accessory building north of stands.*
4. A variance from section 1113.05 (L) of the planning and zoning code to permit an accessory structure to be located in the front yard when accessory structures located in the rear yard are required by code. *The southwest corner of the site allows for the least amount of site disturbance.*
5. A variance from section 1130.05 of the planning and zoning code to permit a 37 ft. front yard setback when a 50 ft. front yard setback is required by code for primary and accessory buildings.

Mr. Benko stated there are seven factors that the BZA should consider when evaluating whether or not a practical difficulty exists. Mr. Benko stated these factors are outlined below, along with a discussion of how these factors apply to the application in question.

1. *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. Benko stated the use of the site will not change pending the result of the variance requests; however, without the granting of variances, Medina City Schools would not gain the additional revenue nor would they get a new, larger storage area at the site. Mr. Benko stated this portion of the city will continue to receive below average cellular service.

2. *Whether the variance is substantial;*

Mr. Benko stated the landscaping variance is a 100% variance. Mr. Benko stated the fence height variance is a 50% variance. Mr. Benko stated the structure size variance is a 221% variance. The front yard setback variance is a 26% variance.

3. *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. Benko stated the essential character of the neighborhood should not be altered. Mr. Benko stated the new light pole is an additional 30' taller than the existing light pole. Mr. Benko stated the new equipment shelter is substantially larger than what is

allowed by code; however, it will be more harmonious with existing north accessory structure. Mr. Benko stated it will provide greater storage for the school.

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

Mr. Benko stated delivery of governmental services may be improved as there will be better cellular service in the area.

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

Mr. Benko stated the applicant has entered into a lease agreement with the Medina City Schools. Mr. Benko stated both parties were aware of the zoning restrictions.

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

Mr. Benko stated although the site is large, much of the site is not suitable for a new light standard or a stand-alone cellular tower as it would interfere with the soccer fields on the site.

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

Mr. Benko stated the likely intent of the requirements is to provide a standard and predictable amount of development and site disturbance for a given parcel and to prevent an excessive number of cell antennas throughout the city by encouraging collocation when possible.

Mr. Benko stated the use of the site will not change pending the result of the variance requests; however, without the granting of variances, Medina City Schools would not gain the additional revenue nor would they get a new, larger storage area at the site. Mr. Benko stated this portion of the city will continue to receive below average cellular service.

Present for the case was Jon Burkhart, 739 Weymouth Road, stated the school is excited about this application. Mr. Burkhart stated the project will bring in additional revenue and provide some additional much needed storage at the Memorial Stadium. Mr. Burkhart stated the lease is contingent on everyone being comfortable with the project.

Also present for the case was Jason Woodward, a representative from TowerCo LLC. Mr. Woodward stated the structure was designed originally for Verizon Wireless however; the goal is to make the structure co-locatable to multiple carriers. Mr. Woodward stated they are trying to utilize as much space as possible to accommodate

future carriers on this platform. Mr. Woodward stated the school has specific needs such as storage for the track and field storage. Mr. Woodward stated the condition of the older snack bar is deteriorated. Mr. Woodward stated the intent is to take away the old structure and bring in a new structure that is more appealing to the neighborhood.

Mr. Humpal addressed each variance request separately. Mr. Humpal addressed the landscaping variance. Mr. Humpal asked if this refers to landscaping just around the storage facility or around the tower base itself. Mr. Benko stated it is around the storage facility only. Mr. Benko stated they are required to have 8 ft. tall evergreens around the building in order to shield it, however; the limited amount of space around the track will make it difficult to put it in there. Mr. Humpal stated he believes there is an uphill slope at that structure.

Also present for the case was Clayton Michael Pincher (spelling is not clear). Mr. Pincher stated he is the Design Engineer working with TowerCo LLC and Verizon on the design drawings for the shelter and the tower. Mr. Pincher was sworn in by the Court Reporter. Mr. Pincher stated the shelter is a combined use shelter that will house all the wireless carriers that can end up on the tower which is a total of three including Verizon and also to be able to expand the building to include the school's storage area. Mr. Pincher stated the storage area is about twice the area of the existing area. Mr. Pincher stated it should give them enough room to store all the track and field related equipment into it. Mr. Pincher stated the shelter itself is split into three areas. Mr. Pincher stated there is one area that will store the radio equipment, another area below it which is open for the HVAC units and generators. Mr. Pincher stated in order to keep the HVAC unit area confined, they will build a false wall with louvers in it for ventilation which would keep it secured and will contain the noise generated from the HVAC units and generator.

Mr. Pincher stated the building will be built on a slight hillside. Mr. Pincher stated therefore, half of the building will be embedded into the embankment that exists by about four feet. Mr. Pincher stated for that reason, they will create a masonry wall that will act as a retaining wall for the backside and will also carry the same theme of the split face block all the way around the building which is the same split block that is on the present concession stand on the northwest side of the track. Mr. Pincher stated their intent is to keep the same architecture as much as possible.

Mr. Pincher stated above the split face block will be metal siding and a metal roof all colored "Medina Green". Mr. Pincher stated the split face block will also match the color and the texture of the existing block.

Mr. Pincher stated the spaces inside the structure are grouped in three different areas so each carrier would have an equal space. Mr. Pincher stated the structure is the typical size a carrier would use to house their equipment.

Mr. Humpal asked to see where the landscaping would have been required on the drawings. Mr. Pincher stated usually the landscaping requirement is around the compound that houses the radio shelter and the tower. Mr. Pincher stated in this case,

since it is quite a habituated area, it is difficult to get any landscaping around the pole itself. Mr. Pincher stated the pole is in an open area where there is traffic constantly.

Mr. Pincher stated there is paving in the area between the shelter and where the track is at.

Mr. Pincher stated there is a small grass strip that separates the parking area at the street and where the shelter is located. Mr. Pincher stated it is a narrow strip that can be planted with grass or stone. Mr. Pincher stated it is confined by the paving on one side and the shelter on the other and would probably end up not getting enough moisture to sustain plant life.

Mr. Williams agreed that it would be difficult to sustain plant life in such a narrow strip. Mr. Williams asked the elevation difference between the shelter and the road. Mr. Pincher stated it is four feet.

Mr. Humpal stated he has no issue with the landscaping variance request. Mr. Humpal asked for comments from the public. There were no comments from the public. Mr. Benko stated notices were sent to the adjoining property owners and the city received no responses.

Mr. Humpal addressed the variance request for a 4 foot fence. Mr. Benko stated the code requires the fence to be between 8 and 10 feet around the structure however, the site has an existing 4 foot tall fence around the entire soccer field facility. Mr. Humpal stated it would not be practical to put a fence around the pole since the pole is adjacent to part of the soccer field. Mr. Humpal asked if there are any liability issues to consider if there were to be an incident with the lower fence. Mr. Mendel stated he does not believe there would be any issues since the equipment will be in a locked inaccessible building. Mr. Mendel stated someone could break into the building possibly but it will be on top of a new light standard which is functionally no different than the light standard that currently exists. Mr. Mendel stated he does not believe it is much different than what is currently existing. Mr. Humpal asked if there are requirements for the light pole as to where steps begin or access to the upper level of the pole. Mr. Pincher stated there are usually climbing pegs on the surface of the pole. Mr. Pincher stated they can remove the pegs to a certain height so they cannot be accessed without a long ladder. Mr. Humpal asked Mr. Mendel if that should be covered in the variance. Mr. Mendel stated if it is not in the code, there is no rational reason as it is not a land use issue. Mr. Mendel stated it is more of a building code issue. Mr. Mendel stated it is not a setback adjacent to a property owner but is something that is internal to the site itself and is more of a legal liability issue than a zoning or land use issue. Mr. Humpal asked if it would be a Planning Commission issue. Mr. Mendel stated that would be stretching the parameters of the Planning Commission oversight as it is more about how this use of land affects adjacent property owners. Mr. Humpal stated he is referring to the four foot fence height. Mr. Humpal is concerned if the board approves a lesser height and someone gets hurt, is there a liability to the city or the board. Mr. Mendel stated there are parts of the code which refer to accessibility to the tower. Mr. Mendel stated there is no requirement in the code

about access to the upper part of the tower. Mr. Mendel stated this is a private structure that has accessibility already.

Mr. Pincher stated this is not the first school they have built towers at and this is a concern with all of them. Mr. Pincher stated it is a concern of his as the design engineer. Mr. Pincher stated when it comes to the design and trying to design something to keep the kids out of the building is a concern. Mr. Pincher stated removing the pegs on the tower to about 20 to 25 ft. above grade makes it very inaccessible to people. Mr. Pincher stated he will show this on the design for the Planning Commission. Mr. Pincher stated the fence requirement of 8 ft. has been addressed by creating the perimeter of the building as being the compound or fence by keeping the HVAC units and exterior related devices within the perimeter of the building. Mr. Pincher stated the perimeter of the building is acting as that fence requirement. Mr. Pincher stated the building wall will be 8 ft. or taller. Mr. Pincher stated he believes they are fulfilling the spirit of the requirement.

Mr. Williams asked for clarification of the location of the four foot fence. Mr. Williams asked if the roof will be more accessible for people to climb on by building this structure into the hill. Mr. Pincher stated he does not know what he can do to avoid this. Mr. Pincher stated it would take a small step ladder to access it. Mr. Pincher stated it is something that would need to be policed by the school.

Mr. Humpal addressed the variance request for the building square footage. Mr. Williams asked the square footage of the existing building. Mr. Pincher stated it is approximately 250 to 270 sq. ft. Mr. Pincher stated the proposed building is about double the size of the existing building. Mr. Pincher explained the need for the extra square footage for the storage of the equipment and also storage for the school.

Mr. Humpal addressed the variance request for the structure to be located in the front yard. Mr. Humpal stated he is not sure where the front yard is on the site. Mr. Mendel stated this is more of a technicality of the code requirement where the actual use of the land is not a traditional principal accessory building set up but is an outdoor open use.

Mr. Humpal addressed the variance request for the front yard set-back. The board members stated they have no questions or issues regarding this request.

Mr. Humpal asked for comments from the public. There were no comments from the public.

Mr. Williams made a motion to approve the five variance requests as stated below:

1. A variance from Section 1146.05(E) of the planning and zoning code to allow construction of the facility without complying with the site landscaping requirements.
2. A variance from Section 1146.05(L) of the planning and zoning code to permit a fence that is 4 ft. in height when an 8 ft. security fence is required by code.

3. A variance from section 1146.05(M) of the planning and zoning code to permit a 2250 sq. ft. accessory structure/ equipment shelter when a maximum 700 sq. ft. accessory structure/ equipment shelter is permitted by code.
4. A variance from section 1113.05 (L) of the planning and zoning code to permit an accessory structure to be located in the front yard when accessory structures located in the rear yard are required by code.
5. A variance from section 1130.05 of the planning and zoning code to permit a 37 ft. front yard setback when a 50 ft. front yard setback is required by code.

Mr. Williams stated his approval is based on the finding that the essential character of the neighborhood will not be substantially altered and the adjoining properties will not suffer a substantial detriment by the granting of the variances.

The motion was seconded by Mr. Bigam.

Vote:

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

2. Z14-14 533 Bronson Debra Hammond VAR

Mr. Benko gave a brief overview of the case. Mr. Benko stated this is a variance request to Section 1113.05(L) of the Planning and Zoning Code to permit a 3.5 foot side yard setback for an accessory structure in an area where a 5 foot setback is required by code.

Mr. Benko stated the site is located on the north side of Bronson Street. Mr. Benko stated Foundry Street is located to the west and N. Huntington Street is located to the east. Mr. Benko stated the property is adjacent to residential on all sides.

Mr. Benko stated the applicant installed an 8' x 12' shed in July of 2013 to replace an existing shed on the property. Mr. Benko stated the applicant acquired all of the necessary permits for the shed replacement. Mr. Benko stated per the approved site plan, the shed was supposed to be located 8 ft. from the property line; however, the shed was installed 3.5 feet from the property line. Mr. Benko stated the shed installer is no longer in business.

Mr. Benko stated staff has spoken with Irene Steffko, executor of the estate of Mr. Edward Corrigan at 555 Bronson Street. Mr. Benko stated Ms. Steffko spoke in favor of the variance being granted. Mr. Benko stated 555 Bronson Street is immediately to the west of the applicant's property and the rear of that property is adjacent to the shed.

Mr. Benko stated the setback of the shed is 30% smaller than what is allowable by code.

Mr. Benko stated the essential character of the neighborhood may not be altered by the proposed variance request. Mr. Benko stated the shed is adjacent to a 6 foot tall privacy fence. Mr. Benko stated the shed replaced an older shed at the site.

Mr. Benko stated the property owner could have the shed moved to meet the required setback.

Mr. Benko stated the likely intent of the requirements is to provide a standard and predictable amount of development and to provide a minimum level of fire separation at lot boundaries.

Present for the case were property owners Rex and Debra Hammond. Mrs. Hammond stated the shed can be moved but would require taking down the fence and remove two raised beds. Mrs. Hammond stated it is possible but would be difficult. Mr. Humpal asked if the shed is anchored into the ground. Mrs. Hammond stated it is not. Mrs. Hammond stated it is Amish built and is setting on large wooden ties.

Mr. Humpal asked how the error was not discovered when the shed was installed. Mr. Benko stated when the building department went back to do the final inspection, it was at 3.5 ft. rather than the required setback. Mr. Benko stated the shed has been in place for almost a year because the building department was back logged and did not get there to do the final inspection for 8 or 9 months.

Mr. Williams asked if the property owner to the west submitted a letter. Mr. Benko stated she called in after receiving the notice of the meeting. Mr. Benko stated she just requested more information and spoke in favor of the shed location.

Mr. Benko stated there have been no other responses from the adjoining property owners.

Mr. Humpal asked for comments from the public. Clifford Norton, 540 Bronson Street, stated he has no issues with the request.

Mr. Benko stated that contractor's will generally move the shed if it is placed incorrectly however; the contractor is no longer in business.

Mr. Hammond stated the shed is sitting on 6 x 6 posts similar to railroad ties. Mr. Hammond stated he dug the spot for the shed and did not know about the 8 ft. requirement.

Mr. Williams made a motion to approve the variance request to Section 1113.05(L) of the Planning and Zoning Code to allow a 3.5 foot side yard setback for an accessory structure when a 5 foot setback is required by code. Mr. Williams stated the approval is based on the finding that the essential character of the neighborhood will not be substantially altered due to the granting of the variance.

Mr. Harris seconded the motion.

Vote:

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

3. Z14-15                      326 E. Smith                      Tom Doyle                      VAR

Mr. Benko gave a brief overview of the case. Mr. Benko stated this is a variance request to Section 1141.05 of the Planning and Zoning Code for a proposed lot in the Industrial District without frontage when parcels with a minimum 100 ft. of frontage is required by code.

Mr. Benko stated the site is located on the south side of E. Smith Road in the 300 block. Mr. Benko stated S. Jefferson Street is located to the west and S. East Street is located to the east. Mr. Benko stated the applicant, Tom Doyle, has purchased a portion of the Medina Supply property adjacent to the rear of his property. Mr. Benko stated this property is zoned I-1 (Industrial). Mr. Benko stated the property located at 326 E. Smith Road is zoned M-U (Multi-Use) and serves as s residence. Mr. Benko stated the recently acquired rear property is entirely landlocked.

Mr. Benko stated the applicant owns the property to the north at 326 E. Smith Road (PP#028-19D-02-012) and intends to grant access to the proposed landlocked parcel, because the proposed parcel has no frontage.

Mr. Benko stated the proposal constitutes a 100% variance since the property will not have road frontage.

Mr. Benko stated the essential character of the neighborhood may not be altered by the proposed variance request, because the conditions on the ground will not change, only ownership and lot lines. Mr. Benko stated the parcel contains a large accessory building that had been used for storage by Medina Supply Company. Mr. Benko stated the property will be used for storage for the applicant's personal use and private collection.

Mr. Benko stated the variance could adversely affect the delivery of government services if emergency access is not delineated to be thru 326 E. Smith. Mr. Benko stated staff has reached out to the Medina Fire Department for comment. Mr. Benko stated Mark Crumley from the Fire Department has spoken with Mr. Doyle and they have produced drawings of the access and access to the fence.

Mr. Benko stated the owner's predicament could be obviated with a much larger rezoning for the area. Mr. Benko stated the landlocked parcel could be added to the applicant's property at 326 E. Smith Road; however, this would require the property to be re-zoned to avoid a property with split zoning. Mr. Benko stated if the entire property were rezoned to either I-1 or M-U, district inconsistencies would be created along with the need for additional variances.

Mr. Benko stated the applicant owns the property to the north of the landlocked parcel, which has Smith Road frontage. Mr. Benko stated if the variance is granted, the city would require that the proposed lot be tied together in perpetuity on title to institutionalize the connection to the private use. Mr. Benko stated the proposed lot could never be sold separately from 326 E. Smith Road.

Mr. Benko stated the likely intent of the requirements is to assure properties have reasonable road access for the general public and emergency services.

Present for the case was property owner, Tom Doyle. Mr. Doyle stated he came to an agreement with Medina Supply. Mr. Doyle stated he would like the property to remain Industrial zoning. Mr. Doyle stated he would like the frontage for an easement across his own property in order to service his property. Mr. Doyle stated the fourth parcel is the problem parcel. Mr. Doyle explained Medina Supply gave him 100 feet in front of the west of the parcel. Mr. Doyle stated it is the parcel in the front of the quansit hut doors that is part of the larger parcel to the left that is being split. Mr. Doyle stated he needs to be able to come into his own driveway to get to his property. Mr. Doyle stated the site is mostly vacant land other than the quansit hut which is cold storage.

Mr. Humpal asked Mr. Doyle if he is agreeable to the city recommendation that the lot be tied together in perpetuity on title to the private use. Mr. Doyle stated he would need to approve a rezoning of everything if he did that. Mr. Doyle stated he intends for the property to remain Industrial which fits into the current and future use zoning maps. Mr. Doyle stated there would be several variances necessary if rezoned. Mr. Doyle stated by just allowing the easement in order to service the property, it would be much easier.

Mr. Mendel stated the issue is that a simple easement would allow Mr. Doyle to get rid of the easement a month later. Mr. Mendel stated the issue is that by title, this new lot would be tied to the existing lot, not combined, but by title would need to always be sold together. Mr. Doyle stated he is not comfortable with that. Mr. Doyle stated it would be ok if someone could meet the qualifications. Mr. Humpal stated the city is proposing that this be part of the variance that they are considering approving. Mr. Mendel stated it is not a condition of the approval but is something that the city requires in this type of situation. Mr. Mendel stated the alternative would be an easement with the condition that the easement is one which is perpetual and only the Board of Zoning Appeals could remove at a future date. Mr. Doyle stated he would be ok with that.

Mr. Doyle stated he does not intend to build anything there. Mr. Williams stated he would be comfortable letting the linking of the parcels be an administrative function and not including it in the variance.

Mr. Williams made a motion to approve a variance request to Section 1141.05 of the Planning and Zoning Code to allow a lot in the Industrial District without frontage when a minimum of 100 ft. frontage is required. Mr. Williams stated the approval is based on the finding that the essential character of the neighborhood would not be substantially altered and the property owner's predicament could not be feasibly obviated without the need for a much larger rezoning of the property.

The motion was seconded by Mr. Bigam seconded the motion.

Vote:

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

4. Z14-16 913 S. Court Scott Reid VAR

Mr. Benko gave a brief overview of the case. Mr. Benko stated this is a request to Section 1155.01(C)(1) of the Planning and Zoning Code to allow 44 linear feet of a 6 foot tall fence within the front yard where only a 3 foot tall fence is permitted.

Mr. Benko stated the site is located on the west side of S. Court Street. Mr. Benko stated Koons Avenue is located to the north and Montview Drive is located to the south. Mr. Benko stated the site is adjacent to residential zoning on all sides.

Mr. Benko stated the proposed fence would have been compliant under the prior zoning code; however, in the updated zoning code, fences located in the front yard are limited to three feet. Mr. Benko stated the contractor was given the outdated fence permit form which detailed the old fence regulations. Mr. Benko stated this was an unfortunate mistake by staff, but does not permit the fence to be installed in violation of the new regulations without review and approval of the Board of Zoning Appeals.

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 proposed fence is 100% taller than what is allowed by code. Mr. Benko stated the essential character of the neighborhood may be altered, because there are no other 6 foot tall front yard privacy fences in the surrounding neighborhood on this area of S. Court St.

Mr. Benko stated instead of a variance, the fence could be reduced to three feet tall and “open” in design.

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

Present for the case was property owner, Scott Reid. Mr. Reid stated the original permit he was issued stated a 6 foot fence was allowable within 10 feet from the sidewalk. Mr. Reid stated they are going 14 feet from the sidewalk. Mr. Reid stated 614 S. Court Street has a 6 foot tall fence ten feet from the sidewalk. Mr. Reid stated the fence is vinyl. Mr. Humpal asked if neighbors were notified. Mr. Benko stated yes.

Mr. Humpal requested comments from adjoining property owners. Mr. Ed Morse, 110 Koon Avenue, stated he would like the fence to be the required 3 foot as he feels 6 feet would look ridiculous. Mr. Morse stated the back of the subject property touches his property. Mr. Morse stated he has a 2 foot chain link fence in the front yard.

Mr. Benko stated he has not received any further comments from adjoining property owners.

Jim Regal, owner of Regal Fence, 3342 Center Road, Avon, Ohio stated he is the contractor for this project. Mr. Regal stated the variance request is for 40 feet in front of the subject property. Mr. Regal stated Mr. Morse’s property is not adjacent to the subject property. Mr. Regal stated he spoke with the building department to see what is allowable and had the information faxed to him. Mr. Regal stated the information stated the 6 foot fence was allowable. Mr. Regal stated the incorrect application still exists on the City’s website as of today as current information.

Mr. Harris asked where the other six foot fence is located in the front yard in relation to the subject property. Mr. Benko stated it is not near the subject property. Mr. Mendel stated he updated the permit on the website some time ago but will check to see why it is not showing the correct permit. Mr. Mendel stated the physical forms in the office were all changed to the new requirements some time ago also.

Mr. Benko stated notices were sent to all adjacent property owners. Mr. Reid stated he would like the 6 foot fence for privacy reasons. Mr. Bigam asked if there is a signed contract with Regal Fence in place. Mr. Reid stated yes.

Mr. Reid stated the fence is not up until the approval is granted. Mr. Mendel stated a permit has not been issued. Mr. Reid stated he has purchased all the materials.

Mr. Williams stated he feels there is a practical difficulty due to the material already having been purchased which is a good faith understanding. Mr. Williams stated he feels there was a good faith effort on Mr. Reid’s behalf to comply with the code.

Mr. Bigam made a motion to approve a variance to Section 1155.01(C)(1) of the Planning and Zoning Code to allow 44 linear feet of 6 foot tall fence within the front yard where only a 3 foot tall fence is permitted. Mr. Bigam stated the approval is based on the finding that the property owner's predicament feasibly cannot be obviated through some method other than a variance since the applicant has entered into an agreement with the contractor and a good faith effort was demonstrated on behalf of the applicant to comply with the regulations.

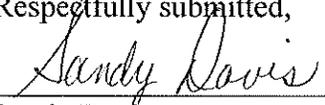
The motion was seconded by Mr. Williams.

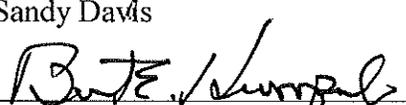
Vote:

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

Having no further business, the meeting was adjourned.

Respectfully submitted,

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

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