

MEETING DATE: 1-11-18

BOARD OF ZONING APPEALS

Z17-02

524 E. Washington



CITY of MEDINA

Board of Zoning Appeals

January 11, 2018 Meeting


Case No: Z17-02

Address: 524 E. Washington Street

Applicant: Gordon Pope

Subject: Variance request from Section 1145.06(c) of the Planning and Zoning Code to permit enlarging the existing gravel driveway from 6 feet wide to 15 feet instead of paving as required.

Zoning: R-2, Medium Density Urban Residential

Submitted by: Jonathan Mendel, Community Development Director 

Site Location:

The property is located on the south side of the 500 block of E. Washington Street.

Background:

At the February 9, 2017 Board of Zoning Appeals meeting, the applicant requested a variance to permit a gravel driveway expansion at the subject property. This project was reviewed by the BZA and approved with the condition that 25 feet of the driveway length from the public right-of-way into the property be paved with a chip and seal treatment.

Due to unforeseen difficulties, the applicant has not been able to install the chip and seal paved pad as required by the BZA approval. With the impending expiration of the variance approval on February 9, 2018, the applicant is bringing the variance before the BZA again to request reapproval of the variance to permit the extension of time for the installation of the improvement. As for staff commentary, the project plan/scope has not changed, so below are the seven variance review criteria, February 9, 2017 BZA packet and February 9, 2017 meeting minutes for additional review.

Please find attached to this report:

1. February 9, 2017 packet for case Z17-02
2. February 9, 2017 minutes for case Z17-02

Considerations:

§1107.08(b) of the Medina Administrative 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.

The request is subject to determination of a practical difficulty as a variance to have an alternative driveway surface. There are seven factors the BZA should consider when evaluating whether or not a practical difficulty exists. These factors are outlined below, along with a discussion of how these factors apply to the application in question.

The applicant shall show by a preponderance of the evidence that the variance is justified, as determined by the Board. 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;*
- B. *Whether the variance is substantial;*
- 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;*
- D. *Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);*
- E. *Whether the property owner purchased the property with knowledge of the zoning restrictions;*
- F. *Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and/or*
- G. *Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.*

The BZA must weigh the above seven factors for the requested variance reapproval and deadline extension and determine if a practical difficulty exists that would merit a variance from section 1145.06(c).

February 9, 2017 packet for
case Z17-02

**RESOLUTION
BOARD OF ZONING APPEALS**

February 10, 2017

Gordon Pope
524 E. Washington St.
Medina, Ohio 44256

PROPERTY: 524 E. Washington St.

CASE NO: Z17-02

WHEREAS, YOUR APPLICATION WAS DULY PROCESSED AND AFTER APPROPRIATE REVIEW AND STUDY THE BOARD HAS PASSED THE FOLLOWING RESOLUTION:

The Board of Zoning Appeals at their February 9, 2017 meeting has approved a variance to Section 1145.06(c) of the Planning and Zoning Code to permit enlarging the existing gravel driveway from 6 feet wide to up to 10 feet or the existing width, whichever is greater, with the requirement that a 25 foot long pad from the apron into the property consisting of Chip & Seal material be installed if approved by the City of Medina Engineering Department or otherwise a zoning code approved material. The approval is based on the finding that the property owner's predicament cannot be obviated through any other method.

Sincerely,



Jonathan Mendel
Community Development Director



MEETING DATE: 2-9-17

BOARD OF ZONING APPEALS

Z17-02

524 E. Washington



CITY of MEDINA
Board of Zoning Appeals
February 9, 2017 Meeting


Case No: Z17-02

Address: 524 E. Washington Street

Applicant: Gordon Pope

Subject: Variance request from Section 1145.06(c) of the Planning and Zoning Code to permit enlarging the existing gravel driveway from 6 feet wide to 15 feet instead of paving as required.

Zoning: R-2, Medium Density Urban Residential

Submitted by: Jonathan Mendel, Community Development Director 

Site Location:

The property is located on the south side of the 500 block of E. Washington Street.

Project Introduction:

The applicant wishes to widen the existing nonconforming gravel driveway from 6 feet wide to 15 feet. This would permit them the ability to access the property without driving on and damaging front and side lawn. Section 1145.06(c) requires paved driveways for this property.

Until late 2016, the applicant used a shared gravel driveway with the neighbor at 528 E. Washington Street. The neighbor at 528 E. Washington Street was granted a permit to install a fence on the shared property line thereby dividing the shared gravel driveway.

This left 6 feet of existing gravel driveway on the applicant's side of the property line. To access their parking area, the subject property's occupants then had to driveway on the existing front and side yard lawns while using their remaining gravel driveway width. City staff informed the applicant that driving/parking was not permitted on the lawns (an unimproved surface). If they wished to widen the driveway, it would have to be hard surfaced/paved.

Please find attached to this report:

1. Driveway widening plan received January 25, 2017
2. Aerial photograph of the property.

Considerations:

§1107.08(b) of the Medina Administrative 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.

The request is subject to determination of a practical difficulty as a variance to have an alternative driveway surface. There are seven factors the BZA should consider when evaluating whether or not a practical difficulty exists. These factors are outlined below, along with a discussion of how these factors apply to the application in question.

The applicant shall show by a preponderance of the evidence that the variance is justified, as determined by the Board. 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;*

If the expanded driveway was paved, the applicant would still have beneficial use of the property and the property would yield a reasonable return.

- B. *Whether the variance is substantial;*

The variance may be considered substantial as it is a 100% variance from the regulation.

- 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;*

The essential character of the neighborhood may not be altered as there are 6 existing gravel driveways (including the applicant's) within the subject property's block (500 block of E. Washington St.) varying from approximately 9 feet to 12 feet wide.

Adjoining properties will not suffer substantial detriment as the result of the variance.

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

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;

The code requirements have been in effect for a significant time period. It is not known if the applicant had knowledge of the code requirements at the time they purchased the property.

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

The owner's predicament may not be obviated through some method other than a variance because the driveway paving requirement is an all or nothing requirement.

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

The likely intent of the paving regulation is to have driveway surfaces that provide a 'finished' uniform aesthetic and reduce the potential for dirt and debris to be pushed/pulled in the public right-of-way (i.e. sidewalk and street).

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 1145.06(c).

Application for Zoning Variance for property located on 524 E Washington St, Medina, OH 44256

The property has a shared gravel driveway with Property located on 528 E Washington St. This neighbor has installed a fence down the driveway which limits the ability to get safely in and out of the driveway. This has resulted in driving onto the grass at the side of the driveway which has created muddy tracks.

Our plan is to widen our side of the gravel driveway from the existing 6 foot to approximately 15 ft. extending from the sidewalk to the end of the side lawn, to safely accommodate entry and exit to the property listed above.



524 E. Washington St.



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By Tom

RECEIVED
JAN 25 2017

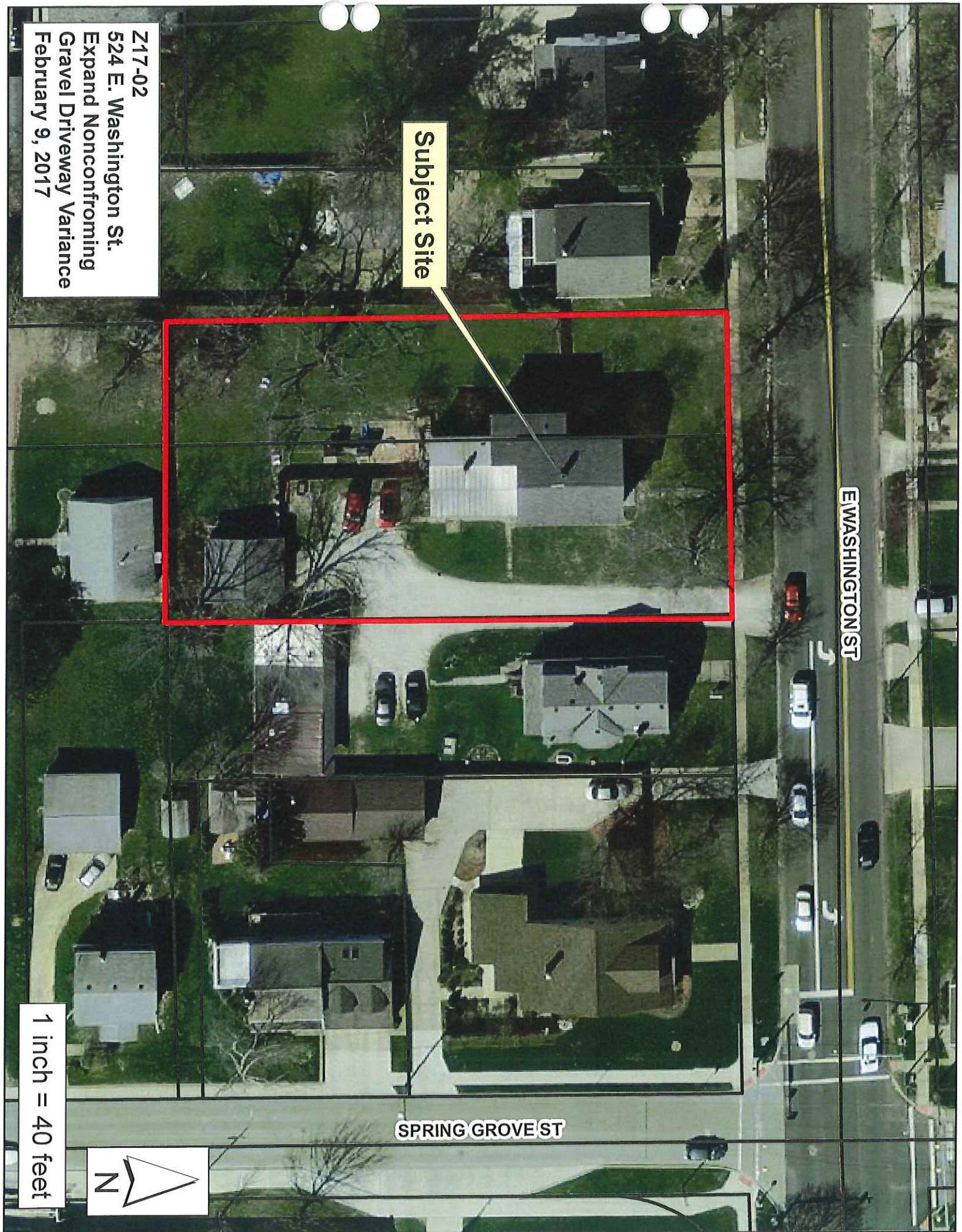
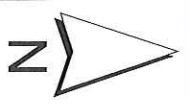
EWASHINGTON ST

SPRING GROVE ST

Subject Site

217-02
524 E. Washington St.
Expand Nonconforming
Gravel Driveway Variance
February 9, 2017

1 inch = 40 feet



February 9, 2017 minutes
for case Z17-02



CITY of MEDINA

Board of Zoning Appeals

Board of Zoning Appeals

Meeting Date: February 9, 2017

Meeting Time: 6:00 pm

Present: Kris Klink, Mark Williams, Paul Roszak, Rob Henwood, Bert Humpal, Jonathan Mendel, (Community Development Director), Sandy Davis (Administrative Assistant)

Absent: None

Minutes: Mr. Williams made a motion to approve the minutes from the January 12, 2017 meeting as submitted. Mr. Klink seconded the motion.

Vote:

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

Mr. Roszak joined the meeting at 6:02pm.

Old Business: None

New Business:

~~1. 717-01 Brittany Moore 1331 Dover Dr. VAR~~

~~Mr. Mendel gave a brief overview of the case. Mr. Mendel stated this is a Variance request to Section 1155.01(c) of the Planning and Zoning Code to allow a 6 foot tall fence in the front yard when a 3 feet tall fence is permitted by code.~~

~~Mr. Mendel stated the property is located on the northeast corner of the intersection of Continental Dr. and Dover Dr.~~

~~Mr. Mendel stated the applicant proposes a 6 feet tall board-on-board fence for the rear yard that continues into the side yard adjacent to Dover Dr. and setback 12 feet from the sidewalk.~~

~~Ms. Moore stated she prefers to not postpone the case but would like to agree to a four foot fence so she does not have to walk dogs out into the yard.~~

~~Mr. Henwood stated he needs the applicant to commit to a height.~~

~~Mr. Klink made a motion to approve a variance to Section 1155.01(c) of the Planning and Zoning Code to allow a 4 foot tall fence in the front yard when a 3 foot 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 substantially altered by the granting of the variance.~~

~~The motion was seconded by Mr. Williams.~~

Vote:

Williams	<u>Y</u>
Henwood	<u>Y</u>
Klink	<u>Y</u>
Roszak	<u>Y</u>
Humpal	<u>Y</u>
Approved	5-0

2. Z17-02 Gordon Pope 524 E. Washington St. VAR

Mr. Mendel gave a brief overview of the case. Mr. Mendel stated this is a Variance request from Section 1145.06(c) of the Planning and Zoning Code to permit enlarging the existing gravel driveway from 6 feet wide to 15 feet instead of paving as required.

Mr. Mendel stated the applicant wishes to widen the existing nonconforming gravel driveway from 6 feet wide to 15 feet. Mr. Mendel stated this would permit them the ability to access the property without driving on and damaging front and side lawn. Mr. Mendel stated Section 1145.06(c) requires paved driveways for this property.

Mr. Mendel stated until late 2016, the applicant used a shared gravel driveway with the neighbor at 528 E. Washington Street. Mr. Mendel stated the neighbor at 528 E. Washington Street was granted a permit to install a fence on the shared property line thereby dividing the shared gravel driveway.

Mr. Mendel stated this left 6 feet of existing gravel driveway on the applicant's side of the property line.

Mr. Mendel stated to access their parking area, the subject property's occupants then had to driveway on the existing front and side yard lawns while using their remaining gravel driveway width. Mr. Mendel stated City staff informed the applicant that driving/parking was not permitted on the lawns (an unimproved surface). Mr. Mendel stated if they wished to widen the driveway, it would have to be hard surfaced/paved.

Mr. Mendel stated the request is subject to determination of a practical difficulty as a variance to have an alternative driveway surface. Mr. Mendel stated there are seven factors the BZA should consider when evaluating whether or not a practical difficulty exists. Mr. Mendel reviewed the following seven factors:

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 if the expanded driveway was paved, the applicant would still have beneficial use of the property and the property would yield a reasonable return.

B. Whether the variance is substantial;

Mr. Mendel stated the variance may be considered substantial as it is a 100% variance from the regulation.

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 there are 6 existing gravel driveways (including the applicant's) within the subject property's block (500 block of E. Washington St.) varying from approximately 9 feet to 12 feet wide.

Mr. Mendel stated adjoining properties will not suffer substantial detriment as the result of the variance.

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 code requirements have been in effect for a significant time period. Mr. Mendel stated it is not known if the applicant had knowledge of the code requirements at the time they purchased the property.

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

Mr. Mendel stated the owner's predicament may not be obviated through some method other than a variance because the driveway paving requirement is an all or nothing requirement.

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 likely intent of the paving regulation is to have driveway surfaces that provide a 'finished' uniform aesthetic and reduce the potential for dirt and debris to be pushed/pulled in the public right-of-way (i.e. sidewalk and street).

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 1145.06(c).

Present for the case was John Oberholtzer, Attorney for the applicant Gordon Pope. Mr. Oberholtzer stated his clients are in South Carolina and filed the application for the variance. Mr. Mendel stated the variance is only for the surface of the driveway and not the width. Mr. Oberholtzer stated there was no problem with the shared driveway until the neighbor erected a fence down the center of the driveway. Mr. Oberholtzer stated he got involved in order to look for a shared driveway agreement that the applicant presumed was in existence. Mr. Oberholtzer stated he has been unable to locate any such agreement. Mr. Oberholtzer stated his client is not in the position of having purchased a piece of property with an existing gravel driveway in which the neighbor erected a fence down the center of it. Mr. Oberholtzer stated now the applicant is in the position of having the requirement of surfacing the drive. Mr. Oberholtzer stated this is a position of considerable hardship on the applicant. Mr. Oberholtzer stated the hardship was caused by the neighbor erecting the fence.

Also present for the case was Kathleen Gutzeit, 802 East Avenue, Apt. B, Elyria, Ohio, the applicant's mother. Ms. Gutzeit stated she is maintaining the home while her daughter is in South Carolina. Ms. Gutzeit stated when her daughter purchased the home in 2003, it was communicated to her daughter that it was a shared driveway. Ms. Gutzeit stated the driveway was all gravel at that time. Ms. Gutzeit stated when the neighbor paid for a survey, it concluded that his drive was 9 ft. and her daughter's drive was 6 ft. Ms. Gutzeit stated he had previously had a rope line up and they were able to get up and down their driveway. Ms. Gutzeit stated when the fence was constructed, the renters were having to drive onto the lawn to get up the driveway. Ms. Gutzeit stated the neighbor has since put new gravel on his side of the drive. Ms. Gutzeit stated she would request permission to have the same gravel put in. Ms. Gutzeit stated she is looking to increase the drive by 10 feet and put gravel in.

Mr. Mendel stated the neighbor did not increase the size of their drive but only put fresh gravel in. Mr. Mendel stated the neighbor applied for a conforming fence and the city is compelled to approve it since there is no legal reason to deny it. Mr. Mendel stated this is what created this unfortunate situation.

Mr. Henwood stated his concern is granting variances for non-conforming uses would damage the city's capacity to retire non-conforming uses.

Mr. Oberholtzer stated he understands Mr. Henwood's concern but this is a predicament that the homeowner did not create.

Mr. Williams asked about putting a date on the variance with the intent of moving towards a paved driveway and also, what is the thought of an all or nothing paved driveway. Mr. Mendel stated it is a reasonable interpretation of what needs to be paved.

Mr. Mendel stated the intent of the code could be to keep debris from being drug out onto the street.

Mr. Oberholtzer stated the abutting property owner has a gravel driveway but does not have to pave it. Mr. Oberholtzer stated it becomes a non-conforming use.

Ms. Gutzeit stated she is willing to put in some type of asphalt. Present for the case was Peter Neura from Neura's Topsoil & Excavating, 1090 Sunhaven Drive, Medina. Mr. Neura stated he has access to asphalt grindings which over time, almost turns into blacktop. Mr. Neura stated this could be put down and be similar to blacktop if acceptable to the city.

Mr. Mendel stated the code states driveways may be constructed with a concrete, brick, or asphalt surface. Mr. Mendel stated permeable pavers may be utilized after review and approval by the City Engineer. Mr. Mendel stated the "Chip & Seal" could be approved by the City Engineer. Mr. Neura stated the thickness of the Chip & Seal depends on the thickness that is put down.

Mr. Roszak asked if the Chip & Seal would be overlaid on the existing gravel and then extended to the same depth on the expanded area. Mr. Neura stated he would install a base material such as gravel and put the grindings over the top of the base.

Mr. Henwood asked staff what length would be appropriate for the grindings. Mr. Mendel stated at least 20 feet long would be the minimum.

Mr. Mendel stated Chip & Seal is not permitted as an apron but he is not sure if it is permitted as a driveway on the private property portion of the drive.

Mr. Williams stated he is more comfortable with allowing a 30 foot length of asphalt grindings due to debris being dragged into the street.

Mr. Lewis stated a gravel base needs to be put down regardless of the outcome because of the mud being dragged onto the street.

Ms. Gutzeit asked the staff to look into changing the code to prevent this situation from occurring to others on a shared driveway situation. Ms. Gutzeit stated the applicant would be acceptable to a 25 foot pad being put in and a base all the way back to the garage.

Mr. Williams made a motion to approve a variance to Section 1145.06(c) of the Planning and Zoning Code to per it enlarging the existing gravel driveway from 6 feet wide to up to 10 feet or the existing width, whichever is greater, with the requirement that a 25 foot long pad from the apron into the property of Chip & Seal material be installed if approved by the City of Medina Engineering Department or otherwise a zoning code approved material. Mr. Williams stated the approval is based on the finding that the property owner's predicament cannot be obviated through any other method.

The motion was seconded by Mr. Roszak.

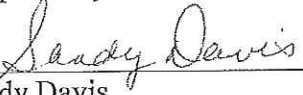
Vote:
Williams Y
Henwood Y
Klink Y
Roszak Y
Humpal Y
Approved 5-0

Mr. Mendel announced that there is a packet of clean-up text amendments on the Planning Commission agenda this evening. Mr. Mendel stated one of the amendments is concerning fence heights on corner lots.

Mr. Mendel stated the situation of a shared driveway fence may be addressed during the meeting this evening.

Having no further business, the meeting was adjourned.

Respectfully submitted,



Sandy Davis



Bert Humpal, Chairman