



MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS

September 5, 2019

A. Call to Order – 7:00 p.m.

1. Roll Call - the following members were present: Mikel Coulter; D.J. Falcoski; Leah Reibel; Brian Seitz, and Cynthia Crane. Also present were Lee Brown, Director of Planning & Building; and Laney Nofer, Planning & Building Assistant.
2. Pledge of Allegiance
3. Approval of the minutes of August 1, 2019

Mr. Coulter moved to approve the minutes, seconded by Mr. Seitz. All Board members voted, "Aye," and the minutes were approved.

4. Affirmation/swearing in of witnesses

B. Items of Public Hearing

1. **Variance** – Front & Side Yard Setback – Fence – **5980 Flora Villa Dr.** (Victoria Baxter)
BZA 37-19

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact & Conclusions

Background:

This 23,245 square foot property is on the northeast corner of Flora Villa Drive and Beechview Drive North. The property is zoned R-10 (Low Density Residential) and hosts a single-family dwelling; other parcels surrounding the property are zoned the same.

On July 1st, 2019, a report was made to staff regarding a fence possibly located too close to the public right-of-way. Staff inspected the property on July 2nd, 2019 and discovered a fence was installed without a permit. Staff contacted the homeowner asking they apply for a fence permit and indicate the location of the fence on the property in respect to property lines. On July 9th, 2019, a fence permit application was filed, and the site plan indicated the fence was located in the area between the building setback line and the public right-of-way.

The homeowner was then asked to either apply for a variance or submit a revised site plan within 30 days.

It was discovered that the fence is also located approximately 6 ½ feet into the public right-of-way. The Director of Service and Engineering has seen the plans and spoken with the homeowner. The Director stated the location of the fence can remain unless the Service and Engineering needs access to the area; in which case, the fence must be removed at the expense of the homeowner.

The applicant is proposing to retain the existing 2 ½ foot tall, open style fence in the required front and side yard setback, as well as within the public right-of-way. The owner is requesting this due to monetary reasons, time put into the project, and to contain dogs in the yard.

Worthington Codified Ordinances:

Section 1149.01 states any dwelling or structure accessory to a dwelling must be at least 30 feet from the public right-of-way.

Section 1149.08(a) states “At corner lots, no accessory uses, or accessory structures shall be located in any required front yard. Side yards fronting adjacent streets can be reduced to two-thirds of the required front yard setback from the right-of-way of the adjacent street.” Making the side yard setback for this case 20 feet.

Section 1149.09 states, “In any district on any corner lot, no fence, structure or planting shall be erected or maintained within ten feet of either the front or side yard right-of-way line at a height greater than two and one-half feet above street grade, nor shall any vehicle or other obstruction be located within fifteen feet of either the front or side yard right-of-way line so as to interfere with traffic visibility”.

Section 1180.02(a) states “In any ‘R’ District, no fence or wall shall be erected in the area between the right-of-way line and the building setback line”.

Request:

The applicant is requesting the fence to be retained at 10 feet from N. Beechview Drive within the public right-of-way and required side yard, and 9 feet from the front yard lot line. A variance of 20 feet from the side yard property line and 21 feet from the front yard property line is required.

Conclusions:

This property is on a corner with additional setback requirements not typically required on other properties in the district. Fencing is typically not permitted in the front yard and corner lots have a practical difficulty with additional setback requirements limiting the

amount of rear and side yard that could be fenced. The fence is under 3 feet and visually open in style. These factors can mitigate the substantial nature of this variance request.

The purpose of preserving intersection sight lines is to allow vehicle drivers to see vehicles, pedestrians, bicyclists, and other users of roads and sidewalks well before reaching an intersection. The proposed fence does not impact the sight lines at the intersection of Flora Villa Drive and Beechview Drive.

The essential character of the neighborhood should not be substantially altered.

The delivery of governmental services should not be affected.

Discussion:

Ms. Crane question posed the question to staff that in the event the current or a future homeowner wished to replace the fence, could it be in the same location. Mr. Brown replied that because the proposed fence is in the public right-of-way, should the City ever need access to that area for any reason, the current homeowner or any future homeowner would be responsible for the fence removal. Any future proposals for fencing or any other structure on this property are not granted to be in the right-of-way unless they again seek approval from the Director of Service and Engineering. In addition, any future requests for fencing must be in substantial compliance with any approved plans.

Mr. Falcoski asked what the fence was embedded in and Mrs. Nofer stated the fence would be embedded in concrete. Mr. Coulter asked if there were any nearby utility lines and Mrs. Nofer said no, there were not any easements, the fence is just located within the public right-of-way. Mr. Brown stated there is a waterline running along Flora Villa that the fence would not be encroaching in. Mr. Brown stated that usually in a public right-of-way adjacent to a roadway, it can be intended or saved for future sidewalks, ditches, or other stormwater needs. Although, Mr. Brown stated he did not know of any future plans for those items at this time.

Ms. Crane pointed out that although this fence was built before obtaining any approvals, they would still treat their review as if it was coming before them pre-built. Ms. Crane stated the Board prefer applicants to obtain all approvals and any applicable variances before starting work. Mr. Brown stated that had the applicant come before the board with this proposal before starting work, they would not allow the fence to encroach in the public right-of-way. Mr. Brown stated, given the amount of work and cost having gone into this fence thus far has been a factor in the Director of Service and Engineering allowing the fence to remain in the right-of-way with the condition it be removed at the expense of the homeowner should the City ever need access. The Director of Service and Engineering has confirmed his decision in writing via email; this statement is apart of the public record in the case file.

Mr. Coulter asked if the property maintenance issue could be tied to maintaining the wall because he did not feel the foundation wall was built deep enough below the frost line and would heave over time, and Mr. Brown said yes. Ms. Crane asked how far the Right-Of-Way extended, and Mr. Brown said right at the edge of the planting bed is where the property line probably stops. Mr. Brown stated if the fence was ever rebuilt the fence would need to be built right along the property line at the edge of the public right-of-way, rather than within in the public right-of-way which it is located now; it would still be located in the required setback.

Ms. Crane asked if the applicant was present. Ms. Victoria Baxter, 5980 Flora Villa Dr., Worthington, Ohio. Ms. Crane asked how deep the concrete was and Ms. Baxter said she believed the concrete was four to six inches deep. Ms. Crane asked if there was anyone present to speak for or against this application.

Ms. Clarinda Delgrande, 5980 Flora Villa Dr., Worthington, Ohio, said she has known Ms. Baxter for thirty-five years and wanted to add a different perspective for consideration. She said Ms. Baxter is a Hospice nurse, and when she's out working in her garden, with her dogs contained safely inside the fence, it frees up her spirit, and helps her do her job better.

Ms. Crane asked the applicant to come forward again. Ms. Crane asked the applicant to confirm how the dogs were contained in the area as she did not see how the fence was closed in. Ms. Baxter, the applicant, stated the fence did connect to neighboring fences and to the garage where an existing gate stood.

Mr. Coulter and Mr. Seitz again expressed concern about the concrete which the fence was embedded in. They were concerned about the concrete freezing and thawing and how that would affect the quality of the fence. The board asked Ms. Baxter to ensure the fence be maintained.

Motion:

Mr. Coulter moved:

THAT THE REQUEST BY VICTORIA BAXTER FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR A FENCE TO BE LOCATED IN THE FRONT AND SIDE YARD SETBACK AT 5980 FLORA VILLA DR., AS PER CASE BZA 37-19, DRAWINGS NO. BZA 37-19 DATED AUGUST 6TH, 2019, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Seitz seconded the motion. Mr. Brown called the roll. Mr. Coulter, aye; Mr. Falcoski, aye; Ms. Reibel, nay; Mr. Seitz, aye; and Ms. Crane, nay. The motion was approved.

2. **Variance** – Side Yard Setback – Hot Tub, Fire Pit, Arbor – **5566 Milton Ave.**
(Eric Rousculp) **BZA 39-19**

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact & Conclusions

Background:

This 7,196 square foot property is an existing lot of record at the southeast corner of Milton Avenue and Sharon Springs Drive. The property is zoned R-10 (Low Density Residential) and hosts a recently renovated single-family dwelling with properties to the north, south, and east also zoned R-10. To the west of the property is the Walnut Grove Cemetery.

In July of 2018, this property was approved for a variance for front yard setback and accessory building area to construct a garage/workshop on the property. A permit application was filed in November of 2018, and currently holds a partial approval.

The applicant is proposing a hot tub, a 7 ½ foot firepit, and arbor to be located in the required side yard off Milton Avenue, which are additional features to the previously approved plans.

The applicant is requesting this location because it would be further from the neighboring properties and the workshop, while still being close to the dwelling. The area of the project would be made level for the proposed uses.

Worthington Codified Ordinances:

Section 1149.01 states any dwelling or structure accessory to a dwelling must be at least 30 feet from the public right-of-way.

Section 1149.08(a) states “At corner lots, no accessory uses, or accessory structures shall be located in any required front yard. Side yards fronting adjacent streets can be reduced to two-thirds of the required front yard setback from the right-of-way of the adjacent street.” Making the side yard setback for this case 20 feet.

Request:

The applicant is requesting the hot tub to be 8 feet from the Milton Avenue public right-of-way line; a variance of 12 feet is required. A raised fire pit is proposed to be 2 feet from

the public right-of-way; a variance of 18 feet is required. An arbor/gate structure is proposed to be 5 from the public right-of-way; a variance of 15 feet is required.

Conclusions:

Existing lots of record tend to be more narrow than the 80 feet typically found in the district. Additionally, corner lots tend to have additional setback requirements, limiting choices. In this particular case, the lot is 64 feet 3 inches wide with a dwelling encroaching into the many of the setbacks.

The location of the proposed items are limited due to the significant slope towards Sharon Springs Drive and the larger accessory building on the eastern edge of the property. The proposed location for the 3 items in question are setback away from other neighboring properties that host single-family dwellings, which is preferable. These factors mitigate the substantial nature of the setback variance request.

The accessory building to the east may act as a barrier from the outdoor patio space to the neighboring property.

The essential character of the neighborhood should not be substantially altered.

The delivery of governmental services should not be affected.

Discussion:

Ms. Crane asked when this property was before the board recently. Ms. Nofer responded that it was in July of 2018, where they were approved for a side yard setback and accessory building area variance for an accessory structure. Ms. Nofer stated some of the features being discussed this evening were also discussed at the hearing last year. Some of those items of conversation have been refined in this application, such as the hot tub.

Ms. Crane asked if the applicant was present. Mr. Eric Rousculp, 5566 Milton Ave., Worthington, Ohio, said the spot they picked out for the hot tub seemed to be the most appropriate location, while they know it does not meet the setbacks. Mr. Rousculp also stated that the lot seems bigger than it is because of the larger right-of-way along Milton, but they are limited. Mr. Falcoski asked if the original plan was to have the hot tub be located on the porch of the accessory building. The applicant replied yes, but it is now proposed further away from the neighboring property as originally planned. Mr. Brown also pointed out what the applicant mentioned earlier that the public right-of-way along Milton is larger as it appears to be 18-20 from property line to edge of roadway. Ms. Crane asked if there was anyone present who wanted to speak for or against this application.

Ms. Katie Ledford, 133 Sharon Springs Dr., Worthington, Ohio, (next door neighbor to the East) was not in support of the proposal. She said she had reservations about the last

proposal but did not say anything because she thought her neighbor would build a respectful structure. Ms. Ledford felt what was showed to neighbors and the board versus what was actually built came out to be different in appearance. She felt the newly built structure looked out of place in the neighborhood. Ms. Ledford said the applicant told her they were building her husband's dream workshop but they now seem to be focusing on the first floor and where the loft is located. She said she at the previous hearing in 2018, she was told they added a bathroom and kitchenette in the structure so they could shower before getting in the hot tub. Now that the hot tub is not in the originally intended location, then why would they need the bathroom and kitchenette. Ms. Ledford suggested her neighbors should go back to their original plan and put the hot tub on the back porch. She felt the proposal before the board today would further obstruct her view. Ms. Ledford mentioned kids do play in the roads and go from house to house, and she was concerned with her lack of a visual on the roadway with the current trees on the neighboring property as well as the accessory building being constructed. She felt the hot tub, arbor, and fireplace would make it even harder to see. Ms. Ledford said she thought the original plans were approved because the Board is ashamed of her neighborhood; she mentioned they are all hard-working people. She stated again that she did not approve of this proposal because it would hinder her view of the road. She also stated she did not think it made sense to have a hot tub and fire pit that close to the road with additional landscaping that would make it difficult to see. Ms. Ledford asked for the trees on the line along Sharon Springs be moved back so she can see cars more easily.

Ms. Crane asked if Ms. Ledford had called the city to discuss the vegetation height requirements because there are some restrictions. Mr. Brown said the Public Service Department can go and look at the lot and check the line of sight. Vegetation can be in the right-of-way, but cannot block the line of sight. Ms. Ledford said her concern was that her neighbors might be adding more vegetation and structures to block the views. Ms. Crane asked Ms. Nofer if the structure was bigger than what was originally planned, and Mrs. Nofer said the Building Official reviewed the plans again to match the structure and felt the structure was in substantial compliance. Mr. Falcoski asked staff to confirm if the structure was different than what was previously shown. Ms. Nofer explained that what the board reviewed at the previous hearing was in regard to the location and square footage as the applicant was asking for a side yard setback and accessory building area variance. When the Building Official was reviewing the plans, it was in compliance with the two points approved at the board, and appeared to be in substantial compliance aesthetically. Ms. Crane asked if the hot tub could be built in the originally planned location without having to come back to the Board and Mr. Brown said yes. Mr. Coulter said he had some concerns about the corner and the sight lines and suggested tabling the meeting until City staff can go review the sight lines and see where the trees are.

Mr. Rousculp welcomed City staff to come look at the right-of-way and said he also wanted the area to be safe. He said he had all four corners of his lot staked before they began the

project. Mr. Rousculp said when they decided not to place the hot tub on the porch the only other place they could put the hot tub and not be within the setback was between the house and the barn and that would be too close to Ms. Ledford's home.

Ms. Lisa Duvernay, 5566 Milton Ave., Worthington, Ohio, said she spoke with Mrs. Nofer earlier about moving two of the four trees that were planted four years ago. She wanted to move them in closer for additional screening and to be out of the right-of-way.

Ms. Margaret Kennedy, 125 Sharon Springs Dr., Worthington, Ohio, said she liked her neighbors but felt the new structure was out of character for the neighborhood and the new structure is bigger than her home. She said she was also concerned about how future owners would use the barn such as short term rentals or living spaces. Ms. Kennedy stated she wanted to preserve the character and safety of the neighborhood.

Ms. Crane asked staff to confirm that the size of the structure was in compliance with the board approval. Ms. Nofer stated that the two variance requests in question the night of the hearing; accessory building area and side yard setback were met. Ms. Nofer stated the size did not exceed the approved accessory building area. Ms. Ledford came forward and expressed concern about their now being a loft in the building, making it taller. Mr. Rousculp replied that he prepared the original drawings and he intended to hire an architect to do the actual design work. He said there was no specification on height and no loft on the drawings, but once the architect and builder got involved, he was told the roofline was wrong and needed to be turned the other direction. Mr. Rousculp said there were some architectural issues with the drawings he provided at the first hearing. He stated when the architect took over the drawings, they drew a roofline design with a taller pitch than what the board originally saw. It was at that time, they added in the loft as well. He checked with Mr. Don Phillips, the Chief Building Official to make sure they were still in compliance and they were. The loft did not get computed into the square footage calculation because there are no permanent stairs leading to the loft. Ms. Nofer stated that Mr. Graves, the field inspector has also conducted a few inspections for the accessory building which have passed.

Ms. Crane suggested the board talk about the items at hand; arbor, hot tub, and fire pit. Ms. Ledford said she was concerned about the additional landscaping and structures being added to her neighbor's yard, and worried about being able to see oncoming traffic from Milton to Sharon Springs. Mr. Brown explained the City can control the Right-Of-Way area, but not onsite landscaping. The homeowner can do what they want to do with their own yard. Mr. Falcoski confirmed with staff that they would take measures to have someone come out and look at the line of sight issue on the corner of Milton Avenue and Sharon Springs Drive. Staff confirmed.

Ms. Crane asked if the proposed items tonight would be factored into the accessory building area for the property. Mr. Brown answered they have not historically done that. Typically, the structure would need a roof, or to be enclosed. Mr. Seitz stated he would be more comfortable voting if there were more complete renderings, and if someone from the City has a chance to assess the line of sight issue.

Mr. Rousculp requested to table the application. Mr. Coulter moved to table the application, seconded by Ms. Reibel. All Board members voted, "Aye," and the application was tabled.

3. **Variance – Side Yard Setback – Fence – 135 W. Clearview Ave. (Robert & Amy Morgan) BZA 40-19**

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact & Conclusions

Background:

This 16,300 square foot property is located on the southeast corner of Evening Street and West Clearview Avenue. The property is zoned R-10 (Low Density Residential) and hosts a single-family dwelling with similar properties being to the north, south, and east. To the west of the property is Evening Street Elementary, zoned S-1.

This property was previously approved by the Architecture Review Board for vegetative screening (arborvitae) around the mechanical units after the previous owners had removed the existing shrubbery. Since the approval, some of the arborvitae have died, and the new owners are now seeking a wood fence as a screen.

The applicant is proposing a fence to screen condensing units and electrical meters. The fence would only provide screening for those features and not the surrounding area of the property.

The proposed fence would be 4 feet in height and 42 feet in length in the required side yard setback.

Worthington Codified Ordinances:

Section 1149.01 states any dwelling or structure accessory to a dwelling must be at least 30 feet from the public right-of-way.

Section 1149.08(a) states that "at corner lots, no accessory uses, accessory structures, structures, material or equipment storage shall be located in any required front yard. Side

yards fronting on the adjacent street can be reduced to two-thirds of the required front setback from the right-of-way of the adjacent street”. The required side yard setback is 20 feet.

Section 1149.09 states, “In any district on any corner lot, no fence, structure or planting shall be erected or maintained within ten feet of either the front or side yard right-of-way line at a height greater than two and one-half feet above street grade, nor shall any vehicle or other obstruction be located within fifteen feet of either the front or side yard right-of-way line so as to interfere with traffic visibility”.

Section 1180.02(a) states that “no fence or wall shall be erected in the area between the right of way line and the building setback line”.

Request:

The applicant is requesting the fence to be approximately 2 feet from the side yard property line. A variance of 18 feet is required.

Conclusions:

This property is on a corner with additional setback requirements not typically required on other properties in the district. This can create difficulty for having a fence outside of the required side yard.

The dwelling is already located in the side yard setback, blocking some visibility across the lot. The fence will not add any additional sight-line issues.

The variance request is not substantial as it is open style and takes up a smaller area of the property than typical fences do. It is also preferable for the condensing units to be screened.

The essential character of the neighborhood should not be substantially altered as the condensing units have been screened before.

The delivery of governmental services should not be affected.

Discussion:

Mr. Brown stated that the Worthington Codified Ordinances require condensing units to be screened. He also stated any vegetative screening would have trouble surviving due to the sloping grade in the yard, creating issues for retaining water. Mr. Brown felt the proposal before them was the best way for the homeowners to meet code and have the required screening.

Ms. Crane asked if the applicant was present. Mr. Robert Morgan, 135 W. Clearview Ave., Worthington, Ohio. Mr. Morgan explained the fence would match the fence in the sample

provided to the board, which is also the same fence as one down the street. Ms. Crane asked if there was anyone present to speak for or against this application, but no one came forward.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY ROBERT AND AMY MORGAN FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR A FENCE TO BE LOCATED IN THE SIDE YARD SETBACK AT 135 W. CLEARVIEW DR., AS PER CASE BZA 40-19, DRAWINGS NO. BZA 40-19 DATED AUGUST 9TH, 2019, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Coulter seconded the motion. Mr. Brown called the roll. Mr. Coulter, aye; Mr. Falcoski, aye; Ms. Reibel, nay; Mr. Seitz, aye; and Ms. Crane, nay. The motion was approved.

C. Other

There was no other business to discuss.

D. Adjournment

Mr. Falcoski moved to adjourn the meeting, seconded by Mr. Seitz. All Board members voted, "Aye," and the meeting adjourned at 8:31 p.m.