



AGENDA
**MIDDLETOWN CITY BOARD OF ZONING APPEALS
REGULAR MEETING**

DATE & TIME: Wednesday, March 2, 2022, at 5:30 P.M.

PLACE: City Council Chambers, One Donham Plaza

MEMBERS:

Todd Moore	Jerry Heidenreich
Gary Gross	David Kash
Dan Ward	Jim Hall
Christopher Amburgey	

STAFF:

Ashley Combs, Development Services Director
Devra Wells, Assistant Development Services Director
James Metz, City Planner

1. Roll Call
2. Pledge of Allegiance
3. Previous Meeting Minutes: February 2, 2022
4. **Public Hearing: Area and Dimensional Variance Case #2-22:** A request by applicant Paul Shoemaker for approval of an Area and Dimensional Variance for the property located at 2900 N Verity Parkway. The property is zoned R-4: Attached Residential District. The variance requested is for an installation of a ground-mounted sign within the public right-of-way where the Middletown Development Code requires a minimum setback of 5 feet from the public right-of-way.
5. Old/New Business
6. Adjournment

*The next regular meeting of the Board of Zoning Appeals will
be held on April 6, 2022, if applications are received.*

BOARD OF ZONING APPEALS MINUTES
February 2, 2022



MEETING
LOCATION: City Council Chambers, City Building

MEMBERS: Christopher Amburgey Todd Moore
PRESENT: Gary Gross Dan Ward
 Jim Hall

STAFF
PRESENT: Devra Wells, Assistant Development Services Director
 James Metz, City Planner

OTHERS PRESENT: Phillip Brandon, Mr & Mrs. Polina

Chairman Todd Moore called the meeting to order at 5:30 P.M. The roll was called by Assistant Development Services Director, Devra Wells. A voting quorum was present for the meeting. Mr. Moore led the pledge of allegiance.

APPOINTMENT OF CHAIRMAN AND ACTING CHAIRMAN

Mr. Moore presented the matter of appointing a Chairman and Acting Chairman and asked if there was anyone who would like to nominate someone. Mr. Amburgey nominated Mr. Moore as Chairman and Mr. Gross seconded the motion. Mr. Moore nominated Mr. Amburgey as Acting Chairman and Mr. Hall seconded the motion. The motions were approved through roll call.

APPROVAL OF PREVIOUS MEETING MINUTES - DECEMBER 1, 2021

Mr. Moore asked if everyone had a chance to review the previous meeting minutes and asked for a motion regarding the December 1, 2021 meeting minutes. Mr. Hall made a motion to approve the minutes as submitted. Mr. Amburgey seconded the motion. The motion was approved through roll call with Gary Gross abstaining.

VARIANCE REQUEST #1-22: AREA AND DIMENSIONAL VARIANCE - 4700 Rosedale/225 N Marshall Road

Mr. Moore presented Area and Dimensional Variance Case #1-22: A variance request by applicant Phillip Brandon of Brandon Homes for approval of an Area and Dimensional Variance at the properties located at 4700 Rosedale Rd and 225 N Marshall Road, Middletown, OH 45042. The properties are zoned R-2: Low-Density Residential District. The variance requested is for a 22-foot reduction of the minimum lot width to create three new lots facing Rosedale Road.

Mr. Metz was sworn in by Mr. Moore and presented the case using a PowerPoint presentation.

Mr. Metz displayed photos of the subject property.

Mr. Metz displayed a zoning map and stated that the properties are zoned R-2 Low-Density Residential District and the minimum lot width is 110ft.

Mr. Metz displayed an aerial photo supplied by the applicant that illustrated potential new lot lines. The photo shows the new potential lots having widths ranging between 83-93'. Mr. Metz states that these new lots would be well under the minimum lot width for the R2 district but still on average for the neighborhood.

Mr. Metz displayed Table 1204-4: Site Development Standards from the Middletown Development Code. He stated that the minimum lot width requirement for the R-2 district is 110 feet.

Mr. Metz stated that per the Middletown Development Code, the requirement for legal notice for variance requests, meeting notice letters for the proposed variance were sent to all property owners contiguous and directly across the street or public right-of-way and noted that no comments were received.

Mr. Metz read Chapter 1226.10: Variances:

Per the Middletown Development Code, the purpose of a variance is to provide limited relief from the requirements of the code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose of property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission. Where an applicant seeks a use variance that would allow for a use not otherwise permitted in the applicable zoning district, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in an unnecessary hardship.

Mr. Metz displayed and read the Area and Dimensional Variance Review Criteria:

A. The following factors shall be considered and weighed by the BZA to determine practical difficulty:

- i. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
- ii. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- iii. Whether the special conditions and circumstances are a direct result from the actions of the applicant, his or her agents, or prior property owners;
- iv. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
- v. 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;
- vi. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;
- vii. Whether special conditions or circumstances exist as a result of actions of the owner;
- viii. Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
- ix. Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or

x. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

B. No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Mr. Metz displayed the following Appeals information: any person or entity claiming to be injured or aggrieved by any final action of the Board of Zoning Appeals has the right to appeal the decision the court of common pleas as provided in the Ohio Revised Code Chapters 2505 and 2506.

Mr. Metz concluded his staff report.

Mr. Moore opened the public hearing and invited anyone forward who wanted to speak for the application.

Applicant, Phillip Brandon, came forward to speak for the requested variance and was sworn in by Mr. Moore. Mr. Brandon thanked the committee for their time and consideration. Mr. Brandon stated the purchase of portions of the parcels 4700 Rosedale Road and 225 N Marshall Road was contingent upon the approval of the 22-foot reduction lot width variance request. Mr. Brandon stated that during inspection the large piece of public utility that the city has recorded through the parcels does not actually exist causing a financial strain that would not make splitting the lot into two parcels which would have the minimum lot width financially feasible. Mr. Brandon argues that the value of three new homes filling the highest and best use of the land as the city of Middletown faces a dearth of affordable homes that are similar in square footage, age and handicap accessible, as well as affordability.

Mr. Brandon stated for the record that the variance request was for lot width but the proposed lots would be undersized as well.

The Board stated that the public utility mentioned previously is a public sewer line.

Mr. Brandon restated that having to reroute a public sewer line on top of the acquisition of the properties is cost-prohibitive.

The Board stated their concerns about the smaller lot sizes devaluing the surrounding properties and how it doesn't fit the neighborhood.

Mr. Brandon restated that many properties around are of similar or smaller lot widths and that new construction has never devalued properties. He also states he has constructed three homes in the general area and it's only had a positive effect on the neighborhood.

The Board described Barbara Park in Middletown how the Development Code wasn't adhered to and it is not something they would like to have repeated in the future.

Mr. Moore closed and invited anyone forward who wanted to speak against the application.

Homeowner, Wendy Polina, came forward to speak against the requested variance and was sworn in by Mr. Moore.

Mrs. Polina stated her concern is the storm sewer run-off backup that is already a problem within the area and believes that three additional homes will only worsen the issue.

Homeowner, Tony Polina, came forward to speak against the requested variance and was sworn in by Mr. Moore.

Mr. Polina stated his concern that the storm sewer runoff already comes up through his basement floor and adding three new homes would only exacerbate the problem.

Mr. Moore invited anyone forward to speak for or against the application. Seeing no new people Mr. Moore closed the public forum.

Mr. Moore asked for a staff recommendation.

Ms. Wells states that the City of Middletown Legal department would prefer for the staff to no longer give recommendations during The Board of Zoning Appeals meetings.

Mr. Moore states that a challenge is the continual shifting environment and would like to be able to speak to the law department to better understand the change.

Ms. Wells states she would be more than happy to arrange a meeting either at a separate time or during the next Board of Zoning Appeals meeting.

Mr. Amburgey states his frustration with the changes both with the removal of staff recommendation at the Board of Zoning Appeals and the lack of communication coming from the City Manager's office.

Mr. Moore reiterates his concern for the removal of the staff recommendation. He stated that it creates a level of arbitrariness where it's disruptive to the entire process when Board Members do not know what the next process will be.

Ms. Wells acknowledges both Mr. Amburgey and Mr. Moore's concerns and states that she will schedule a time with the City Law Department to explain their perspective.

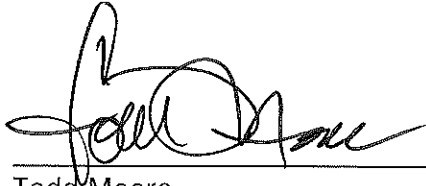
Mr. Moore asks for a recommendation for approval or denial on the variance case #1-22. Hearing no motions Mr. Moore motioned for denial of the variance as requested. Mr. Amburgey seconded the motion. The motion was approved unanimously through roll call.

NEW/OLD BUSINESS

Mr. Moore welcomed The City of Middletown's new City Planner, James Metz.

ADJOURNMENT

With no further business to conduct, there was a motion to adjourn at 5:58 pm. The motion passed unanimously.



Todd Moore
Chairman



James Metz
City Planner

*Full Meeting Recording Available in the Development Services Department.