

BOARD OF ZONING APPEALS MINUTES
March 2, 2022



MEETING
LOCATION: City Council Chambers, City Building

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

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

OTHERS PRESENT: David Marsh

Chairman Todd Moore called the meeting to order at 5:30 P.M. The roll was called by James Metz. A voting quorum was present for the meeting. Mr. Moore led the pledge of allegiance.

APPROVAL OF PREVIOUS MEETING MINUTES – FEBRUARY 2, 2022

Mr. Moore asked if everyone had a chance to review the previous meeting minutes and asked for a motion regarding the February 2, 2022 meeting minutes. Mr. Gross made a motion to approve the minutes as submitted. Mr. Ward seconded the motion. The motion was approved through roll call with David Kash and Jerry Heidenreich abstaining.

VARIANCE REQUEST #2-22: AREA AND DIMENSIONAL VARIANCE – 2900 N VERITY PARKWAY

Mr. Moore presented Area and Dimensional Variance Case #2-22: A variance request by applicant Paul Shoemaker for approval of an Area and Dimensional Variance at the property located at 2900 North Verity Parkway, Middletown, OH 45042. The property is zoned R-4: Attached Residential District. The variance requested is for the 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.

Mr. Metz was sworn in by Mr. Kash 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 property is zoned R-4: Attached Residential District and that the ground-mounted sign is approved for an R-4 zoning district.

Mr. Metz displayed an aerial photo supplied by the applicant that illustrated the proposed location of the sign along with the property lot lines showing the property outside of the property lot lines and in the public right-of-way. Mr. Metz states that engineering had approved the proposed location.

Mr. Metz displayed a picture supplied by the applicant stating that Mr. Metz was informed that

the sign was intentionally built as a break-away sign as a safety measure and that the sign would meet the requirements if installed in a

Mr. Metz stated that per the Middletown Development Code, the requirement for legal notice for variance requests, and 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.

Property owner, David Marsh, came forward to speak for the requested variance and was sworn in by Mr. Kash. Mr. Marsh thanked the committee for their time and consideration. Mr. Marsh stated the sign was bought with the intention of placing the sign on the property but after the purchase realized the intended location was not actually their property. The new sign was to replace a sign that was previously located in the public right-of-way. The public bench in the right-of-way is for public transportation and not owned by him.

Mr. Moore asks if there is an office at the property's location.

Mr. Marsh states that there is an office where the pool used to be.

Mr. Moore states that he asked that question to better understand the need of the sign and the location of it. Mr. Moore proposes a wall mounted sign or another method to solve the predicament outside of a variance request.

Mr. Marsh states that he hadn't considered other possibilities as the signs were already bought with the intention of replacing the previous signs on this property and several other properties. Mr. Marsh continues to state that he doesn't believe a wall sign on the property would be the most ideal as there is a speed change at that location from 35mph to 50mph and a sign on the side of the property will be hidden with a new development he intends to build to the south side of the existing apartment building.

Mr. Kash swears in Devra Wells, Assistant Development Services Director.

Ms. Wells states that this property is a unique situation as far as the signage and zoning code is concerned. The property is zoned residential so the kind of signs that are normally permitted for commercial businesses such as large wall signs are not typically allowed in residential districts. For ground-mounted signs it specifies it has to be installed at the entrance so the variance request could be modified to be built closer to the entrance of the building however, that would still require a variance request. A wall sign could be mounted as long as it wasn't larger than 30 square feet.

Mr. Kash asks if the Development Code would permit the sign to be placed closer to the intersection.

Ms. Wells states as long as it would still receive approval from the Engineering Department. She continues to state that the Board could make a condition or requirement to the approval which could include moving the sign closer to the intersection.

Mr. Kash states that he wouldn't want to make it a requirement but to understand if there is

flexibility in the approval to allow the sign to move closer to the intersection if the applicant and building owner would like.

A board member suggests allowing the sign to be angled to the road to the south of the apartments as well.

Mr. Amburgey acknowledges that the other board members are considering approval with flexibility assuming the engineering department approves the location.

Mr. Moore acknowledges that as there is no one else to speak tonight he will close the public hearing.

Mr. Moore states that if he understands his colleagues correctly that there is an interest in approving the variance request with a flexibility in moving the sign closer to the intersection to the south as long as it would receive engineering approval.

Because of a board member's question, Mr. Moore explains that due to the City's Legal Department that the staff no longer gives a staff recommendation.

Mr. Kash moves that the variance be granted that the Review Criteria Ai that the special circumstances of this property and also with flexibility in moving the sign closer to the intersection to the south as long as it would receive engineering approval.

A Mr. Amburgey asks for a modification which would include engineering and zoning approval.

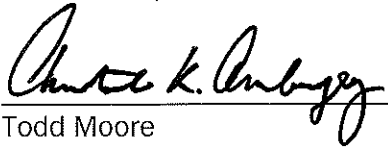
Mr. Kash agrees to amend his motion and proposes bounding the location of the sign from the initial proposed location and towards the intersection.

Mr. Kash moves that the variance be granted and that the review criteria Ai would suffice and that the applicant be authorized to install the sign within the area from the proposed location to the intersection assuming it will still meet engineering and zoning approval. Mr. Gross seconded the motion. The motion was approved unanimously through roll call.

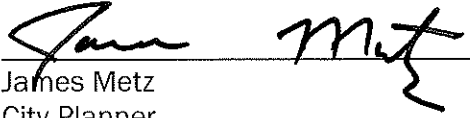
NEW/OLD BUSINESS

ADJOURNMENT

With no further business to conduct, there was a motion to adjourn at 6:11 pm.
The motion passed unanimously.



Todd Moore
Chairman



James Metz
City Planner

*Full Meeting Recording Available in the Development Services Department.