

**BOARD OF ZONING APPEALS MINUTES**  
**August 23, 2023**



MEETING

LOCATION: City Council Chambers, City Building

MEMBERS: Christopher Amburgey Todd Moore  
PRESENT: Stefan Wannemacher David Kash  
Jerry Heidenreich

STAFF

PRESENT: James Metz, City Planner

OTHERS PRESENT: Mustafa Khalifa, Amr Talaat, Brandon Griffin

Chairman 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.

**VARIANCE REQUEST #9-23: 2000 PEARL STREET**

Mr. Moore presented Variance Case #9-23: A request by applicant Ronald Decker for approval of an Area and Dimensional Variance for the property located at 2000 Pearl Street. The property is zoned R-4: Attached Residential District. The variance requested is to allow for the construction of a four-unit multi-family dwelling that would not meet the minimum site development standards set forth in the Middletown Development Code. The property is a non-conforming lot of record which would allow for a single-family home to be erected provided the buildings comply with the minimum setbacks to the maximum extent practical.

Mr. Metz was sworn in and presented the case using a PowerPoint presentation. Mr. Metz displayed photos of the subject. Mr. Metz displayed a zoning map and stated that the property is zoned R-4: Attached Residential District. Mr. Metz read the City of Middletown's Development Code Chapter 1204.10 Site Development Standards and stated that the property is properly zoned for a 4-unit residential dwelling and that it would meet all of the setbacks but as the property is on a non-conforming lot of record it would need the Board of Zoning Appeals approval to construct a multi-unit residential dwelling.

Mr. Metz stated that per the Middletown Development Code, the requirement for legal notice for variance requests, and meeting notice letters for the proposed appeal 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 displayed and read Chapter 1226.10: Variances and the Area and Dimensional Variance Review Criteria.

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 to the court of common pleas as provided in the Ohio Revised Code Chapters 2505 and 2506.

Mr. Metz stated the applicant was present and concluded his staff report.

Mr. Moore stated he would like to open the public forum. Mr. Moore asked if there is anyone who would like to speak in favor or opposition of the project.

Mustafa Khalifa and Amr Talaat were sworn in by Mr. Kash. Both Mr. Khalifa and Talaat discussed the need for the demolition of the previously existing residential building and the necessity for the reconstruction of a 4-unit residential dwelling in order for the build to be financially valuable.

Mr. Moore asked if anyone else would like to speak in favor or opposition. Scott Tucker was sworn in. Mr. Tucker stated that he owns the business across the street and would not like a apartment building built as it could impact street parking and it would affect his business.

Mr. Moore asked if anyone else would like to speak in favor or opposition. Hearing none, Mr. Moore closed the public hearing.

Mr. Moore asked if there was a motion. Mr. Kash made a motion to approve the variance as submitted. Mr. Wannemacher seconded the motion. The motion was approved through roll as a 5-0 vote.

Mr. Gross – Absent

Mr. Hall – Absent

Mr. Moore – Yes to Approve

Mr. Amburgey – Yes to Approve

Mr. Heidenreich – Yes to Approve

Mr. Kash – Yes to Approve

Mr. Wannemacher – Yes to Approve

**VARIANCE REQUEST #19-23: 1601 SOUTH UNIVERSITY BOULEVARD**

Mr. Moore presented Variance Case #19-23: A request by applicant Brandon Griffin for approval of an Area and Dimensional Variance for the property located at 1601 South University Boulevard. The property is zoned B-2: General Business District. The variance requested is to allow for the construction of a fence that exceeds 9ft whereas the Middletown Development Code does not permit fences in the B-2 zoning district to exceed 8ft in height.

Mr. Metz was sworn in and presented the case using a PowerPoint presentation. Mr. Metz displayed photos of the subject. Mr. Metz displayed a zoning map and stated that the property is zoned B-2: General Business District. Mr. Metz read the City of Middletown's Development Code Chapter 1208.06 Fences, Walls, and Hedges specifically stating fence heights permitted with the B-2 zoning districts.

Mr. Metz stated that per the Middletown Development Code, the requirement for legal notice for variance requests, and meeting notice letters for the proposed appeal 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 displayed and read Chapter 1226.10: Variances and the Area and Dimensional Variance Review Criteria.

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 to the court of common pleas as provided in the Ohio Revised Code Chapters 2505 and 2506.

Mr. Metz stated the applicant was present and concluded his staff report.

Mr. Moore stated he would like to open the public forum. Mr. Moore asked if there is anyone who would like to speak in favor or opposition of the project.

Mr. Kash swore in Brandon Griffin. Mr. Griffin briefly covered the need for the 9ft tall fence citing homeless individuals destroying his property.

Mr. Moore asked if there is anyone who would like to speak in favor or opposition of the project. Hearing none, Mr. Moore closed the public hearing.

Mr. Kash asked for the location of the fence and why it wasn't surrounding his property if it was for a safety issue. Mr. Griffin stated the fence is designed more to stop onlookers from entering his property and not necessarily the homeless that he has befriended.

Mr. Kash asked about the fire safety concerns on the property and if a fire truck would be able to access the back half of the property in case of a fire. Mr. Griffin stated that there would be a gate that would be able to be unlocked if necessary.

Mr. Moore asked if there was a motion. Mr. Kash made a motion to approve the variance as submitted citing review criteria A1. Mr. Wannemacher seconded the motion. The motion was approved through roll as a 5-0 vote.

Mr. Gross – Absent

Mr. Hall – Absent

Mr. Moore – Yes to Approve

Mr. Amburgey – Yes to Approve

Mr. Heidenreich – Yes to Approve

Mr. Kash – Yes to Approve

Mr. Wannemacher – Yes to Approve

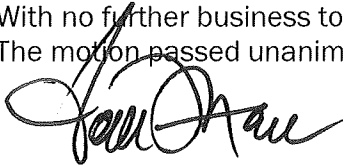
### **NEW/OLD BUSINESS**

Mr. Moore stated that he “wanted to bring one thing before us tonight. I'm thinking about just the efficiency of our meetings. But I'm also thinking about our review criteria. I know, we did not have the plans. I know there were some comments whether we needed to have certain information. I would, I would ask that, if all possible. I don't want to speak out of line. But if all possible that we do always have some type of plans, because when you look at the review criteria. I mean, certainly there's always the challenge that it could be, you know, suppose we denied something we didn't have criteria in front of us. That, you know, if that is appeal, then we raise that question whether or not it's arbitrary and capricious as far as how that decision play out. So, I was just thinking about that. I know that there is concern sometimes we want efficient meetings, we want things done. But if at all possible, when staff has that I know that the last time we didn't, it was questions about whether or not we had the correct information. You know, again, I'm just thinking about the process itself and that was it's not something that we have routinely. But you made the comment tonight about whether or not that it was

important to show certain things, the pictures and things like that. I know, we're looking it's not a planning commission meeting, because we're looking at different hardship criteria here. But I was just as we think about, you know, meetings, those plans are very important. We're not necessarily a board looking at to approve the actual plan, but it does help for the context of the case, and side yard setbacks, all those sorts of things. But, again, that information should have case go wrong. We have that information in the record for appeal that otherwise it could raise questions whether or not it's arbitrary on our behalf. So just wanted to raise that as a concern".

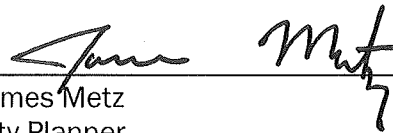
**ADJOURNMENT**

With no further business to conduct, there was a motion to adjourn at 6:30 pm.  
The motion passed unanimously.



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Todd Moore  
Chairman



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James Metz  
City Planner

\*Full Meeting Recording Available in the Development Services Department.