

Minutes of the City of Vandalia Board of Zoning Appeals
March 10, 2021

Agenda Items

1. Call to Order
2. Attendance
3. New Business
 - a. BZA 21-01 – Variance to Table 1224-2: Permitted Accessory Uses and Structures – 6425 Miller Lane
 - b. BZA 21-02 – Variance to City Code Section 1232.06(d) “Screening between Land Uses” – 6425 Miller Lane
 - c. BZA 21-03 - Variance to Table 1224-2: Permitted Accessory Uses and Structures – 4511 Poplar Creek Road
4. Approval of BZA Minutes of December 09, 2020
5. Communications
6. Adjournment

Members Present:	Mr. Michael Flannery, Mr. Christopher Prokes, Ms. Amber Aivalotis-Weaver, Ms. Arlene Setzer, and Mr. David Arnold
Members Absent:	
Others Present:	David Potts, Doug Miller, Kelly Long, Mark Myers, Craig Weatherhead, Michael Flannery, Dan Wendt, and David Marlow

1. Call to Order

Mr. Flannery called the meeting to order at 6:02 p.m. Mr. Flannery described the BZA as a recommending body that evaluated the BZA application and stated that the City Council made the final decision on all appeal and variance requests, but will not hold a public hearing such as BZA. He noted that City Council would hear the request at the meeting on April 05, 2021 at 7:00 p.m. Mr. Flannery then swore in those who intended to speak during the public hearing.

2. Attendance

It was noted that a quorum of members was present.

3. New Business

- a. **BZA 21-01 – Variance to Table 1224-2: Permitted Accessory Uses and Structures – 6425 Miller Lane**

Mr. Flannery introduced the item and asked for the report from Staff.

Mr. Marlow gave the report from Staff explaining that the Applicant, Mark Myers, had requested a variance to allow the construction of a drive-through facility in the front yard of property located at 6425 Miller Lane, where drive-through facilities were only permitted in the side or rear yard. In accordance with City Code Section 1224.01(e)(8) “Drive-Through Facilities”, all drive-through

areas, including but not limited to drive-through signs, waiting lanes, trash receptacles, audio equipment, drive up windows, and other objects associated with the drive-through area shall be located in the side or rear yard of a property. Mr. Marlow mentioned the Applicant was proposing to demolish the existing building that formerly occupied the Ruby Tuesday restaurant and construct a Culver's restaurant that included a drive-through facility. Mr. Marlow noted the Applicant was proposing to minimize the visibility of the drive-through facility from the public right-of-way by providing a landscape plan that, in their opinion, exceeded the required landscaping. Mr. Marlow went on to say the table shown in the meeting packet represented Culver's proposed plan for landscaping adjacent to Benchwood Road and Miller Lane which included 7 shade trees, 4 evergreen trees, 84 evergreen shrubs, 8 large flowering shrubs, 12 medium flowering shrubs, 28 small flowering shrubs, and 12 perennials.

Mr. Marlow explained the Code requirement for the proposed site included the following to be adjacent to Benchwood Road and Miller Lane:

- 1) A screening shall be located directly adjacent to the vehicular use area and be no less than 10 feet in width
- 2) The buffer shall be composed of a continuous evergreen hedge or dense planting of evergreen shrubs
- 3) A minimum of 51 percent of the perimeter screening shall include earth mounding
- 4) The earth mounding, in combination with the plantings, shall be at a height of no less than three feet at the time of installation
- 5) The visual buffer shall have an average opacity of 80 percent
- 6) One shade tree shall be provided every 25 to 30 feet

Mr. Marlow noted that Staff was recommending the Board of Zoning Appeals recommend approval of the requested variance from Table 1224-2: Permitted Accessory Uses and Structures for the purposes of allowing a drive-through facility to be located in the front yard at 6425 Miller Lane with the following condition:

- The landscape plan provided to the BZA was approved by Planning Commission through site plan review

Mr. Flannery then opened the public meeting and invited the Applicant to speak on the matter.

Mr. Myers explained that Culver's was excited to come to Vandalia and he felt they had a beautiful building and landscape plan that would make everyone proud.

Mr. Prokes asked when Planning Commission would review the plan. Mr. Marlow replied Planning Commission would review the site plan at their March 23 meeting. Mr. Marlow noted the landscape plan also proposed to remove a 5-foot wide area of pavement adjacent to Benchwood Road to expand the width of the landscape area from 5-feet to 10-feet. Mr. Marlow continued to note the Code required a 10-foot wide landscape area, so the Applicant was proposing to come into compliance with that requirement.

Ms. Setzer asked if Culver's would be keeping the existing monument signs. Mr. Myers replied yes.

Ms. Setzer asked Staff to explain the sidewalk situation. Mr. Marlow replied the Applicant was proposing to connect the two parking lots with a pedestrian connector. Mr. Marlow continued to reply but the connection would also require the Church to construct the path on their side of the

property. Ms. Setzer explained that she thought the Church was already required to build the sidewalk. Mr. Marlow replied the Church was required to extend the existing sidewalk along Benchwood Road but what was being proposed would be an additional sidewalk that connected the two adjacent parking lots between Culver's and New Life Worship Center.

Mr. Prokes asked if the shared parking area near the south property line was in compliance with the Code. Mr. Prokes noted the lot to the south was supposed to be a hotel use. Mr. Marlow replied that the Code standards in the Miller-Benchwood Overlay encouraged shared parking between adjacent properties so yes it was in compliance.

Mr. Arnold asked if the existing curb opening on Miller Lane would be shared between Culver's and the future use of the adjacent property to the south. Mr. Marlow replied yes.

Mr. Prokes asked if the drive-through traffic would be directed to exit onto Miller Lane. Mr. Myers replied that was the plan. Mr. Prokes thought the line of sight with the proposed landscaping may be an issue if someone was to turn onto Benchwood Road from Culver's. Mr. Marlow replied that the Code would require the line of sight triangle to be maintained and the landscaping must be setback 10-feet from the curb opening.

Mr. Arnold suggested the possibility of making the curb opening on Benchwood Road a right turn only exit. Mr. Marlow mentioned Planning Commission and Staff would look into the ingress/egress of the property through site plan review.

Mr. Flannery closed the public hearing and proceeded through the variance criteria.

Variance Criteria

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without a variance;

BZA Response: The Board felt the property in question could have a beneficial use without granting of the variance.

- (2) Whether the variance is substantial;

BZA Response: The Board felt the variance was substantial.

- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

BZA Response: The Board did not feel the essential character of the neighborhood or adjoining properties would suffer a substantial detriment as a result of the variance.

- (4) Whether the variance would adversely affect the delivery of government services (i.e., water, sewer, garbage);

BZA Response: The Board did not feel the variance would adversely affect the delivery of government services.

- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;

BZA Response: The Board felt the property owner purchased the property with knowledge of the zoning restriction because Staff mentioned in an email back in October that drive-throughs were not permitted in the front yard.

- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

BZA Response: The Board did not feel the property owner's predicament feasibly can be obviated through some method other than a variance.

- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; and

BZA Response: The Board did not feel the spirit and intent behind the zoning requirement would be observed or substantial justice done by granting the variance.

- (8) Any other relevant factor to assist the Board of Zoning Appeals in weighing and balancing the public and private benefits and harms of the requested relief.

BZA Response: The Board felt the proposed landscaping enhancement in comparison to the existing landscaping on the site and what was required by Code was a relevant factor. Also, the Board felt the Applicants effort to minimize the visibility of the drive-through facility from a well-traveled intersection and commercial area was noteworthy.

Mr. Prokes made a motion to recommend approval of the variance request from Table 1224-2: Permitted Accessory Uses and Structures for the purposes of allowing a drive-through facility to be located in the front yard at 6425 Miller Lane with the following condition:

- 1) The landscape plan provided to the BZA was approved by Planning Commission through site plan review

Ms. Setzer seconded the motion. The motion passed 5-0.

Mr. Marlow advised that the variance item would be discussed at the City Council Workshop on March 15 at 6:00 p.m. and voted on April 5 at 7:00 p.m. Mr. Marlow noted both meetings would be virtual, and any interested party may contact the DES Department to request the log in information. Mr. Marlow continued to note all applicants would automatically be sent the log in information.

b. BZA 21-02 – Variance to City Code Section 1232.06(d) “Screening between Land Uses” – 6425 Miller Lane

Mr. Flannery introduced the item and asked for the report from Staff.

Mr. Marlow gave the report from Staff explaining that the Applicant, Mark Myers, had requested a variance to allow a 10-foot wide screening adjacent to the west property line, where a 30-foot wide screening was required at 6425 Miller Lane. Pursuant to City Code Section 1232.06(d) “Screening between Land Uses”, a commercial use that was adjacent to a public/institutional use

must screen their property with a 30-foot wide landscape area when a fence or mound was not proposed. Mr. Marlow mentioned the west property line was shared with a place of worship. Mr. Marlow noted the screening shall include 8 shrubs, 4 shade/evergreen trees, and 3 ornamental trees (per 50 linear feet). Mr. Marlow went on to say the shared property line was approximately 200 linear feet and would require 32 shrubs, 16 shade/evergreen trees, and 12 ornamental trees. Mr. Marlow explained the table shown in the meeting packet represented Culver's proposed plan for screening of the adjacent place of worship use and included keeping the existing shade tree and adding 6 ornamental trees, 6 evergreen trees, 30 evergreen shrubs, 6 medium flowering shrubs, 24 small flowering shrubs, and 6 low evergreen shrubs.

Mr. Marlow noted that Staff was recommending the Board of Zoning Appeals recommend approval of the requested variance from City Code Section 1232.06(d) "Screening between Land Uses" for the purposes of allowing a 10-foot wide screening adjacent to the west property line at 6425 Miller Lane with the following conditions:

- 1) The landscape plan provided to the BZA was approved by Planning Commission through site plan review
- 2) The proposed pedestrian access to the adjacent property at 3350 Benchwood Road shall only be installed if Staff received written approval from the adjacent property owner before planting was installed

Mr. Flannery then opened the public meeting and invited the Applicant to speak on the matter.

Mr. Myers mentioned he did not have any further comments.

Mr. Marlow explained that the landscape plan noted there was a possible pedestrian access to the adjacent property, but if no access was provided then landscaping would be added to fill in the gap. Mr. Marlow went on to say the existing pavement along the west property line was setback 10-feet and the Applicant was not proposing to change the location of the pavement.

Ms. Aivalotis-Weaver asked if Staff had any communication with the Church. Mr. Marlow replied no, but a letter was sent to the Church notifying them of the meeting and the Building Department had been in constant communication with the Church on their own building addition and the Church had not brought up the proposed project.

Mr. Miller mentioned he was with Brumbaugh Engineering & Surveying and they were doing the site development for Culver's and he was also the Engineer who was helping the Church with their trusses on the addition. Mr. Miller explained he spoke with Pastor Tom Friend that day and made him aware of the possible connection via a sidewalk within the landscape area and he was in favor of it because he did not want to drive from the Church to Culver's. Mr. Miller went on to say he could get that in writing and there would also be the connection along Benchwood Road as well.

Mr. Prokes asked if the proposed location of the sidewalk if that would have any ramifications on the Church's addition. Mr. Marlow replied the proposed sidewalk would go right into the Church's parking lot. Mr. Flannery noted the sidewalk would be to the north of the Church addition. Mr. Marlow noted the Church addition was not proposing any windows on the east wall facing Culver's so the addition would act as a screening between the two properties.

Mr. Arnold explained he thought the landscaping proposal instead of the fence would have a better look as he felt the fence would be unsightly. Mr. Marlow mentioned that Staff agreed and

mentioned in the memo that they felt the landscaping proposal would be more visibly appealing than a fence.

Mr. Flannery closed the public hearing and proceeded through the variance criteria.

Variance Criteria

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without a variance;

BZA Response: The Board felt the property in question could have a beneficial use without granting of the variance.

- (2) Whether the variance is substantial;

BZA Response: The Board did not feel a 20-foot variance was substantial.

- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

BZA Response: The Board did not feel the essential character of the neighborhood or adjoining properties would suffer a substantial detriment as a result of the variance.

- (4) Whether the variance would adversely affect the delivery of government services (i.e., water, sewer, garbage);

BZA Response: The Board did not feel the variance would adversely affect the delivery of government services.

- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;

BZA Response: The Board did not feel the property owner purchased the property with knowledge of the zoning restriction.

- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

BZA Response: The Board felt the property owner's predicament feasibly could be obviated through some method other than a variance by removing 5-feet of pavement and erecting a 6-foot in height privacy fence. However, the Board acknowledged a landscaping buffer would be more visually appealing.

- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; and

BZA Response: The Board did not feel the spirit and intent behind the zoning requirement would be observed or substantial justice done by granting the variance.

- (8) Any other relevant factor to assist the Board of Zoning Appeals in weighing and balancing the public and private benefits and harms of the requested relief.

BZA Response: The Board felt the proposed landscaping enhancement in comparison to the existing landscaping on the site was a relevant factor. Also, the Board felt visibility of the site from the adjacent property would be minimized further by the church addition.

Mr. Arnold made a motion to recommend approval of the requested variance from City Code Section 1232.06(d) "Screening between Land Uses" for the purposes of allowing a 10-foot wide screening adjacent to the west property line at 6425 Miller Lane with the following conditions:

- 1) The landscape plan provided to the BZA was approved by Planning Commission through site plan review
- 2) The proposed pedestrian access to the adjacent property at 3350 Benchwood Road shall only be installed if Staff received written approval from the adjacent property owner before planting was installed

Ms. Setzer seconded the motion. The motion passed 5-0.

Mr. Marlow advised that the variance item would be discussed at the City Council Workshop on March 15 at 6:00 p.m. and voted on April 5 at 7:00 p.m. Mr. Marlow noted both meetings would be virtual, and any interested party may contact the DES Department to request the log in information. Mr. Marlow continued to note all applicants would automatically be sent the log in information.

c. BZA 21-03 – Variance to Table 1224-2: Permitted Accessory Uses and Structures – 4511 Poplar Creek Road

Mr. Marlow noted the applicant for the variance request was on the Board of Zoning Appeals so the Board would be requesting Mr. Flannery to recuse himself from the next variance item and allow Mr. Prokes to oversee the request as Vice-Chairman of the BZA. Mr. Marlow continued to note that Mr. Flannery would leave his seat as Chairman and present his variance request from the podium.

Mr. Prokes asked if he had a motion to accept Mr. Flannery's request for recusal. Ms. Setzer motioned to accept Mr. Flannery's request for recusal. Mr. Arnold seconded the motion. The motion passed 4-0.

Mr. Prokes swore in Mr. Flannery.

Mr. Prokes introduced the item and asked for the report from Staff.

Mr. Marlow gave the report from Staff explaining that the Applicant, Mike Flannery, had requested a variance to allow the construction of a 480 (16' x 30') square foot detached garage in the front yard of property located at 4511 Poplar Creek Road, where detached garages were only permitted in the side or rear yard. Mr. Marlow mentioned the proposed 480 square foot detached garage would be an addition to an existing 1200 (40' x 30') square foot detached garage. Mr. Marlow noted the existing detached garage was located approximately 10-feet from the front property line adjacent to S Brown School Road. Mr. Marlow went on to say the proposed addition would further encroach the structure into the front yard by an additional 6-feet and reduce the setback from the front property line to approximately 4-feet. Mr. Marlow explained the subject property was

approved of a variance in 2006 to allow the existing 1200 (40' x 30') square foot detached garage to be located in the front yard.

Mr. Marlow mentioned that Staff was recommending the Board of Zoning Appeals recommend approval of the requested variance from Table 1224-2: Permitted Accessory Uses and Structures for the purpose of allowing a 480 (16' x 30') square foot addition to an existing detached garage in the front yard at 4511 Poplar Creek Road.

Mr. Prokes then opened the public meeting and invited the Applicant to speak on the matter.

Mr. Flannery explained his property had beautiful scenery but with that came challenges that included a cliff, creek, and a varying terrain. Mr. Flannery continued to explain he was limited with what he could do in specific areas.

Ms. Setzer mentioned that out of all the variance requests she had reviewed this may be the best reasoning for the need of a variance.

Mr. Prokes noted he was surprised to see the number of accessory structures that were located in what was defined as the front yard but given the topography there was little space available.

Mr. Marlow explained although the addition would be close to the property line the existing detached garage was setback 140-feet from the edge of pavement on S Brown School Road and it was setback 35-feet from the right-of-way along Poplar Creek Road but 100-feet from the edge of pavement.

Mr. Flannery mentioned if you're driving south on Brown School Road the structure would not be visible. Mr. Flannery continued to mention the area dated back before the present location of Brown School Road and Interstate 70 which was why there were barns in the front yard.

Mr. Prokes closed the public hearing and proceeded through the variance criteria.

Variance Criteria

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without a variance;

BZA Response: The Board felt the property in question could yield a reasonable return and the property had a beneficial use without granting of the variance.

- (2) Whether the variance is substantial;

BZA Response: The Board felt the variance was substantial.

- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

BZA Response: The Board felt the essential character of the neighborhood would not be altered as a result of the variance. The subject property had an existing detached garage in the front yard and the adjacent property at 4485 S Brown School Road had two barns in the

front yard. Also, the proposed addition would not be visible from an adjoining residential property.

(4) Whether the variance would adversely affect the delivery of government services (i.e., water, sewer, garbage);

BZA Response: The Board did not feel the variance would adversely affect the delivery of government services.

(5) Whether the property owner purchased the property with knowledge of the zoning restriction;

BZA Response: The Board did not feel the owner purchased the property with knowledge of the zoning restriction.

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

BZA Response: The Board did not feel the property owner's predicament feasibly could be obviated through some method other than a variance. There was minimum space between the house and the creek bed for a detached garage to be constructed without risking flood damage. In addition, the other option for placement of the structure in the rear yard would require crossing a creek bed to access it.

(7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance; and

BZA Response: The Board felt the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. There were few properties in the City that faced as many challenges as the subject property had when trying to construct a building on the lot. The subject property fronted two streets and a highway, was heavily wooded, had steep elevations, and included a creek bed that ran through the middle of the property.

(8) Any other relevant factor to assist the Board of Zoning Appeals in weighing and balancing the public and private benefits and harms of the requested relief.

BZA Response: The Board felt there were no other relevant factors that were not already addressed in the above comments.

Ms. Setzer made a motion to recommend approval of the variance request from Table 1224-2: Permitted Accessory Uses and Structures for the purpose of allowing a 480 (16' x 30') square foot addition to an existing detached garage in the front yard at 4511 Poplar Creek Road.

Mr. Arnold seconded the motion. The motion passed 4-0.

Mr. Marlow advised that the variance item would be discussed at the City Council Workshop on March 15 at 6:00 p.m. and voted on April 5 at 7:00 p.m. Mr. Marlow noted both meetings would be virtual, and any interested party may contact the DES Department to request the log in information. Mr. Marlow continued to note all applicants would automatically be sent the log in information.

Mr. Prokes asked for a motion to retract Mr. Flannery's recusal. Ms. Setzer made a motion to retract Mr. Flannery's recusal. Ms. Aivalotis-Weaver seconded the motion. The motion passed 4-0.

4. Approval of December 09, 2020 Meeting Minutes

Ms. Aivalotis-Weaver made a motion to recommend approval of the December 09, 2020 meeting minutes. Ms. Setzer seconded the motion. The motion was approved 5-0.

5. Communications

Mr. Marlow mentioned the scheduled March 24 BZA meeting had been cancelled due to no items on the agenda. Mr. Marlow noted daylight savings would begin at 2:00 a.m. Sunday morning so remember to set your clocks ahead one hour. Mr. Marlow continued to note Easter Sunday was on April 4th and the Vandalia Recreation Center would be closed that day.

6. Adjournment

The meeting was adjourned at 6:51 p.m.

Chris Prokes
Vice-Chairman