

Minutes of the City of Vandalia Board of Zoning Appeals
May 23, 2018

Agenda Items

1. Call to Order
2. Attendance
3. New Business
 - a. **BZA 18-12** – Variance to City Code Section 1276.06 “Front Yards” – 273 Mountair Dr.
 - b. **BZA 18-13** – Variance to City Code Section 1255.05 “Lot Development Standards” – 6750 Old Webster St.
4. Approval of BZA Minutes of May 9, 2018
5. Communications
6. Adjournment

Members Present:	Mr. Michael Flannery, Mr. Aaron Hathaway, Mr. Scott Fullam, and Mr. Christopher Prokes
Members Absent:	
Others Present:	Phil Miller, Jon Miller, Pamela Bates, Rob Cron, and David Marlow

1. Call to Order

Mr. Flannery called the meeting to order at 6:00 p.m. Mr. Flannery described the BZA as a recommending body that evaluates the BZA application and stated that the City Council makes the final decision on all variance requests, but will not hold a public hearing such as BZA. He noted that City Council will hear the requests at the meeting on June 18, 2018 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 all members were present.

3. New Business

- a. **BZA 18-12** – Variance to City Code Section 1276.06 “Front Yards” – 273 Mountair Dr.

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

Mr. Marlow gave the report from Staff explaining that the Applicant, Pamela Bates, had requested a variance to allow construction of an 8-foot by 21-foot patio cover on her property located at 273 Mountair Dr. He noted that City Code Section 1276.06 (e)

permitted architectural features such as canopies to project into a front yard not more than three feet and the RSF-4 Zoning District required a front yard setback of 30 feet. Mr. Marlow stated that the subject property maintained a compliant 30-foot front yard and the proposed patio cover would have an 8-foot projection, bringing the front setback to 22 feet, which required the variance request to be for 5 feet.

Mr. Marlow referenced that the Applicant had submitted a letter of justification in which she stated that the house was in need of a new roof and felt this would be the best time to tie it all together. He advised that the Applicant continued noting that she had an existing concrete patio she would like to cover completely to help block the sun, keep ice off of the patio, and be able to hang a few plants. Mr. Marlow further noted that the Applicant stated she had spoken to neighbors who were on board with the patio plans, and she felt the request would produce an aesthetically proper addition to her neighborhood. He advised that Staff was recommending approval for the variance as they felt the request was not out of character for that particular neighborhood and provided greater use of the front yard.

Mr. Flannery invited the Applicant to speak on the matter.

Pamela Bates said she would like the patio cover for aesthetic reasons and also to block the sun and cover the furniture from the rain.

Mr. Prokes asked the Applicant for clarification that the patio cover would be a joint project with the new roof. The Applicant said yes, so that she could tie the patio cover in with the new roof.

Jon Miller mentioned that they had put a patio cover on the back side of the house two seasons ago when they put a new back roof on.

With no further comments, Mr. Flannery closed the public hearing and proceeded through the variance criteria.

- (1) Whether, unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions with the property or the neighborhood in which the property is located that burdens the property heavier than other property in the same zoning district;**

The Board agreed that they didn't feel there were unique physical circumstances or conditions burdening the property heavier than another in the same zoning district

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

The Board agreed that they felt the property would yield a reasonable return and could be beneficially utilized without the addition of the covered patio

- (3) Whether the property owner purchased the property with knowledge of the zoning restrictions;**

The Board didn't feel the property owner purchased the property with any knowledge of the zoning restriction

(4) 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;

The Board agreed that they had identified other properties on Mountair Drive with similar front patio covers. There were numerous houses on Mountair and throughout the plat with that type of cover. The Board agreed that the covers were not out of character for that neighborhood and didn't feel that adjoining properties would suffer a substantial detriment as a result of the variance

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

The Board acknowledged the owner's desire to have a shaded area in which to sit out front and to protect their front patio from the sun. Short of requesting the owner to reduce the projection of the cover, the Board did not believe the predicament could be eliminated feasibly through another method

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

The Board agreed that substantial justice would be done by granting the variance. As noted, a number of homes on the street and in the neighborhood had patio covers with a very similar projection into the front yard

(7) Whether the variance is substantial.

The Board determined the variance request was not particularly substantial.

Mr. Prokes made a motion to recommend approval of the requested variance from City Code Section 1276.06 (e) "Front Yards" to permit an 8-foot by 21-foot patio cover at 273 Mountair Drive. Mr. Hathaway seconded the motion. The motion carried 4-0.

Mr. Cron mentioned to the Applicant that the variance would be on City Council's study session agenda for June 18.

b. BZA 18-13 – Variance to City Code Section 1255.05 "Lot Development Standards" – 6750 Old Webster St.

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

Mr. Marlow gave the report from Staff, explaining that the Applicant, Steve Brown, on behalf of Montgomery County, had requested a variance to allow construction of a storage building at 6750 Old Webster Street. He noted that the Applicant wished to locate the proposed structure 13' – 10 and ¼" from the east side lot line where 20-feet was the minimum distance permitted by the Public Facilities Zoning District and the lot in

question is owned by Miami Conservancy District and bordered by two lots owned by Montgomery County.

Mr. Marlow stated that the Applicant submitted a letter of justification in which they had explained that they were requesting a variance to the side setback for the Sheriff's Training Facility storage building. He continued stating that the letter noted the property was in the process of being transferred to the County, after which the County would replat the lots and the property line in question would no longer exist. Mr. Marlow mentioned that the Applicant further provided that the process would take longer than they could accommodate as they needed to occupy the building by January 1.

He noted that the Board of Zoning Appeals reviewed a variance request for the property in November 2017 regarding a west side setback of 11 feet where 20 feet was the minimum distance required in order to construct 3 modular units. Mr. Marlow continued by saying that at that time, the County advised they were working with MCD to have the property transferred and to Staff's knowledge, no progress had been made.

He stated that due to new information, Staff was recommending the Board of Zoning Appeals table the variance request until such time that the Applicant obtained a survey that confirmed the building placement as it pertained to adjacent lot lines and received approval from the property owner, Miami Conservancy District, to construct the building, and showed evidence of progress regarding the transferring of ownership of the property.

Mr. Flannery invited the Applicant to speak on the item.

Mr. Brown, on behalf of Montgomery County requested that the Board review what he said that night and instead of going with Staff's recommendation that the Board allowed them (Montgomery County) to proceed. He presented a map that showed the land Montgomery County and Miami Conservancy District owned near the proposed building site. He clarified that the proposed building would not only be a storage barn, but also an indoor training facility.

Mr. Brown continued to explain that the Miami Conservancy District owned a small narrow strip of land situated between properties that Montgomery County owned, and on that strip of land is where Montgomery County was proposing to build the pole barn. He acknowledged that Montgomery County did not have a building permit from Miami Conservancy District, but that they were on board with the County's plans and would issue the County a building permit the next day if the County desired to have one. He stated that the location is in a flood plain and did not see why the pole barn could not be placed inside the setback requirements as the purpose for setbacks is to allow greenspace in congested areas.

Mr. Brown noted that the County had been in conversation with Miami Conservancy District since November about purchasing the strip of land that divided Montgomery County properties, so that the County did not have to receive a variance every time they wanted to build on that land. He stated that the County would be meeting with Miami Conservancy District in September to come to an agreement on the County purchasing the strip of land. He mentioned that he saw no reason why the County could not receive a variance in May, when they received a variance back in November for their modular units, other than the City was worried about the purchasing of the land, but he

mentioned he tried to address those concerns that night. He continued to state that the County had made a commitment in writing and had a letter back from Miami Conservancy District that stated they didn't see why they couldn't have it all done and settled by September at their next board meeting.

Mr. Prokes asked what was holding up the transferring of ownership. Mr. Brown answered by saying that the County had simply been busy and with having a small staff they hadn't had the time yet to get it done.

Mr. Hathaway asked what the proximity was for actually closing the deal and purchasing the property. Mr. Brown stated that the Miami Conservancy District's next board meeting was in June, but the County couldn't make it to that meeting, so they would have to go to the next meeting which was in September.

Mr. Fullam wanted to clarify that the hurry to get the variance was that they wanted to begin training as soon as possible. Mr. Brown clarified by saying that they had a schedule and didn't want to call the clients and tell them they couldn't handle them.

Mr. Cron stated that a few concerns from Staff was that there was not a correct site plan or survey for the location of the existing modular units and the proposed pole barn. He continued by saying the variance for the modular units back in November was 11 feet from the west property line, but if the drawing that County had provided for the meeting was accurate, then they actually met the 20-foot requirement on the west side, but were to close on the east side, so Staff did not know whether the drawing they submitted for the variance back in November was correct or the drawing of where they actually are at now were correct.

Mr. Marlow noted that the same issue was occurring now as the County's variance application stated the variance was for 11 feet, when the site plan showed the variance being for 13'-10 ¼". Mr. Brown said that was a typo as the person who was submitting the variance application was in a hurry and copied the previous variance application from back in November.

Mr. Cron mentioned that there was not a building permit from the Miami Conservancy District for the proposed pole barn, and so technically the County did not have permission to build the pole barn on the property until they acquired that permit. Those were some of the concerns Staff had when considering recommendation for the variance.

Mr. Cron noted that the only way the property line issue could be removed is if it was replatted.

There were no further questions from the Board. Mr. Flannery asked if the Applicant would like to add anything additional prior to the Board closing the public hearing. Mr. Brown simply stated that he wanted to thank the Board for their consideration.

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

- (1) Whether, unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions with the property**

or the neighborhood in which the property is located that burdens the property heavier than other property in the same zoning district;

The Board agreed that the lot itself was rather narrow, having only 74 feet in width.

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

The Board agreed that the property would yield a reasonable return and could be beneficially utilized without granting of the variance.

- (3) Whether the property owner purchased the property with knowledge of the zoning restrictions;**

The Board agreed that because the City of Vandalia annexed the property in 1988 and had been under Conservancy District ownership since at least the 1960's it was unlikely the owner had knowledge of the restrictions.

- (4) 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;**

The Board did not feel the adjoining properties would suffer a substantial detriment as a result of the variance.

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

The Board agreed that the Applicant had identified an issue with meeting the side setback requirements. The issue stemmed from the width of the lot being 74 feet and the width of the structure being 40 feet. Short of reducing the width of the storage building, it did not appear the owner's predicament could feasibly be eliminated through another method.

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

The Board agreed the spirit and intent behind the zoning provision would be observed as it is all open space and the proposed building would not encroach upon another.

- (7) Whether the variance is substantial.**

The Board agreed the variance was substantial.

Mr. Flannery asked if there was any more discussion needed.

Mr. Cron stated that Staff wanted to see a correct site plan with accurate measurements done by an unbiased surveyor.

Mr. Hathaway made a motion to approve the variance to City Code Section 1255.05 "Lot Development Standards" to allow a storage building be placed 13' – 10 and ¼" from the east side property line at 6750 Old Webster Street with the following two conditions:

1. The Applicant obtain a building permit from MCD, the property owner
2. The Applicant obtain a survey to confirm building placement as it pertained to adjacent lot lines and received approval from the property owner

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

4. Approval of May 9, 2018 Meeting Minutes

Mr. Hathaway made a motion to recommend approval of the May 9, 2018 meeting minutes. Mr. Fullam seconded the motion. The motion was approved 3-0. Mr. Prokes abstained from the vote.

5. Communications

Mr. Marlow stated that the next Zoning Code Steering Committee meeting would be on June 5, with another one two weeks later on June 19. The next scheduled Board of Zoning Appeals meeting on June 13 was cancelled as there was nothing on the agenda for that night.

6. Adjournment

The meeting was adjourned at 6:53 p.m.

Michael Flannery
Chairman