

DRAFT

Minutes of the City of Vandalia Board of Zoning Appeals
June 27, 2018

Agenda Items

1. Call to Order
2. Swearing In
3. Attendance
4. New Business
 - a. **BZA 18-14** – Variance to City Code Section 1276.11 “Accessory Uses and Structures” – 1428 Helke Road
 - b. **BZA 18-15** – Variance to City Code Section 1276.02 “Fences and Walls” – 178 N. Brown School Road
5. Approval of BZA Minutes of May 23, 2018
6. Communications
7. Adjournment

Members Present:	Mr. Michael Flannery, Mr. Aaron Hathaway, Mr. Christopher Prokes and Ms. Amber Aivalotis-Weaver
Members Absent:	Mr. Scott Fullam
Others Present:	Albert Miller, Jo Goldsmith, Melissa Pruszynski, Amber Holloway 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 August 20, 2018 at 7:00 p.m. Mr. Flannery then swore in those who intended to speak during the public hearing.

2. Swearing In

Ms. Amber Aivalotis-Weaver was sworn in by Ms. Melissa Pruszynski.

3. Attendance

It was noted that a quorum of members was present

4. New Business

- a. **BZA 18-14** – Variance to City Code Section 1276.11 “Accessory Uses and Structures” – 1428 Helke Road

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

Mr. Marlow gave the report from Staff explaining that the Applicant, Albert Miller, had requested a variance to allow a 1152 square foot extension to an existing detached garage. Mr. Marlow continued explaining that the variance was to appeal City Code Section 1276.11 "Accessory Uses and Structures" to permit the extension of an existing detached garage that would total 6.5 percent of the lot area, where 3.5 percent was the maximum permitted for accessory structures and the proposed detached garage would be 96 percent of the gross floor area of the principal structure, where 40 percent of the gross floor area of the principal structure was the maximum percent permitted for an accessory structure. Mr. Marlow stated that the Applicant also applied for a variance to allow the proposed detached garage to exceed the maximum 30 percent impervious surface lot coverage in the Residential Single-Family (RSF-2) Zoning District, upon formal review by Staff the Applicant would not need a variance for the detached garage, but for the minimum driveway needed to serve all the new additional bays of the garage. Mr. Marlow continued stating that the minimum driveway needed was 700 square feet and that additional driveway would put the lots total impervious surface coverage to a minimum of 31 percent.

Mr. Marlow noted that the Applicant had submitted a letter of justification in which he explained that he had nine classic cars and two of which were in storage and one was outside. He continued noting that the Applicant would like to get all of his cars together at home and that the garage was only used for storage of the cars and some parts for those cars. Mr. Marlow explained that the Applicant stated in his letter that he maintained his property and wished to get all his cars inside to keep the property neat. Mr. Marlow continued explaining that the Applicant noted in his letter that he hoped to get approval so that he could continue to live in Vandalia and allow his daughter to finish school at Butler.

Mr. Marlow stated that Staff was recommending the Board of Zoning Appeals recommend denial of the requested variance from City Code Section 1276.11 "Accessory Uses and Structures" for the purposes of allowing the 1152 square foot extension of the already existing detached garage on property located at 1428 Helke Road.

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

Albert Miller explained that he wanted to add on to the existing detached garage, so that he could store all of his cars that he had at home. He continued explaining that he already had two cars stored for a few years and that after a while it did not add up to keep paying to store them. He continued saying that he did not understand what Staff meant by the 700 square feet. Mr. Marlow stated that he would need to extend the driveway to allow access from the street to the new extension on the detached garage.

Albert Miller asked if the triangle shaped driveway extension that he had proposed would add up to 700 square feet. Mr. Marlow answered yes.

Albert Miller stated he did not know of any objections from his neighbors, but that he would try to keep his property well maintained and that he believed his proposed extension of the detached garage would be presentable and it was not going to be a shed. He explained that he did not realize he owned two lots until he paid the house off and received two tax bills. He continued explaining that the lot lines go straight through his house and he wanted to build the detached garage on the other side of his property because it would have been more feasible for the property, but was told he could not build across the property line even though he owned both lots. He noted that he believed because he had to build the detached garage on only one of the

lots it put the dimensions of the lot out of proportion, because he was only using one portion of the entire lot.

Mr. Prokes asked Mr. Marlow if the variance was for the driveway or for the structure. Mr. Marlow stated the variance was for the detached garage.

Mr. Prokes asked if the item had either one or two variances. Ms. Holloway stated there was a number of variances working in on the detached garage however, if the Board should recommend approval of allowing the extension the Board should also know that the impervious surface maximum would then be breached as well.

Mr. Hathaway asked for clarification that the variance was for the 6.5 percent of the lot area versus the 3.5 percent maximum. Mr. Marlow stated that not including the impervious surface there would be two variances needed. Mr. Marlow continued to state that the two variances were for the 6.5 percent of the lot area and the detached garage exceeded 40 percent of the principal structure.

Ms. Holloway stated that 40 percent of the gross floor area of the principal structure was the maximum allowed for accessory structures. She continued stating that there was a lot of numbers in play here and it was definitely confusing, but the Code said that accessory structures could not exceed 3.5 percent of the lot area and it went on to say it could not exceed 40 percent of the gross floor area of the principal structure and Ms. Holloway explained that the reason for that was the scaling, so someone with a larger lot could not dwarf the house, which was not the case here, but that was where those numbers were coming from. She explained that the maximum impervious surface coverage was also in play.

Mr. Flannery asked if Staff was calculating the house's whole square footage and not just the part of the house that was on the lot. Mr. Marlow stated that Staff included both lots in their calculations.

Mr. Flannery asked if the Applicant had to have a driveway. Mr. Marlow stated that the Applicant had to extend the driveway to allow access to the street.

The Applicant stated that the cars were not used every day as he only drives about two or three of the cars.

Mr. Flannery noted that he was not sure how the Code defined a hard surface and asked if the Applicant received a variance for gravel would it be pervious surface. Ms. Holloway stated that impervious surface was defined as anything that directly hinders the absorption of running water to the ground below it.

Mr. Prokes asked about the Applicant's topography. The Applicant stated the back of his property had a minimum slope.

Mr. Flannery asked if the neighbor, Ms. Goldsmith, had any comments or questions. She stated she came because the letter she received was not specific as to what the Applicant was proposing, but she said that now that she knew what the topic was that she did not have an issue with it.

Mr. Prokes asked Ms. Goldsmith if she had spoken to any of the neighbors. Ms. Goldsmith stated no.

Mr. Flannery asked if Staff sent out letters to the neighbors. Mr. Marlow said that all the neighbors received a letter and that he did not receive any responses.

Mr. Prokes stated that this was a significant request and it was stated in the Staff report that the detached garage would be 96 percent of the principal structure and would be like having a second similarly sized dwelling on the property. He asked if the Applicant was concerned about trying to sell or the value of the property. Albert Miller said he did not have a concern as he was not building a shack and he was not the only person who had a bad hobby of collecting cars. He continued to state that other owners on the street collected cars, but did not have as many as he did.

Mr. Flannery stated that there was a couple large garages near the Applicant's property.

Mr. Flannery asked the Applicant if he had any further comments to add before he proceeded through the variance. The Applicant stated that he would like to get all of his cars inside and right now he had to back the car out of the garage to get the tractor out to mow the yard. He continued to state he was always moving cars around and had been doing it for years and would like the variance so he could have some room.

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 variance.

- (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 the requested size of the detached garage was not in character with the neighborhood and felt adjoining properties may suffer a detriment due to the size of the proposed structure.

Mr. Prokes referred to Staff's comment that a garage of this size could attract a future buyer interested in a commercial—like use like a car mechanic, and stated he had neighbors on his street with two car garages that try to use their garage as a mechanic shop.

Ms. Avialotis-Weaver stated that if they tried to open up a business it could be seen and dealt with at that time.

Mr. Flannery stated that he saw other large garages in the neighborhood, but none that were of the size that the Applicant was proposing. He continued, stating to state that the proposed size of the detached garage was probably not the norm in the neighborhood, but that it would not be the only large garage.

Mr. Prokes agreed with Mr. Flannery and stated especially behind the property. He continued, stating that he lived in the neighborhood and a lot of the garages sit behind the principal structure, but he could not speak on the size of those garages as they related to the percentage of the house and how they compare to the percentage of the proposed detached garage as it related to the principal structure.

Mr. Flannery stated it was hard to see the existing detached garage until you were almost past it.

Mr. Prokes stated that he believed you would see the proposed extension of the detached garage, but was not any different than the other garages in the area.

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

The Board agreed that they felt the predicament could not be eliminated by reducing the size of the detached garage.

(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 they did not feel the intent behind the zoning requirement would be observed by granting of the variance request. City Code Section 1276.11 "Accessory Uses and Structures" was quite specific as to the maximum size permitted for an accessory structure and 96 percent of the principal structure was like having another principal building on the single-family lot.

(7) Whether the variance is substantial.

The Board agreed the variance request was substantial.

Mr. Hathaway made a motion to recommend denial of the requested variance from City Code Section 1276.11 "Accessory Uses and Structures" for the purposes of allowing the 1152 square foot extension of the already existing detached garage on property located at 1428 Helke Road.

Mr. Prokes seconded the motion. The vote was 2-2 with Mr. Prokes and Mr. Flannery voted against the recommendation of denial.

Ms. Holloway noted that the item would move forward to Council without a recommendation.

Mr. Marlow informed the Applicant that the item would be discussed at the July 16th City Council Workshop at 6:00p.m. in the Large Conference Room.

b. **BZA 18-15** – 178 N. Brown School Rd. – Variance to “Fences and Walls” City Code Section 1276.02

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

Mr. Marlow gave the report from Staff, explaining that the Applicant, All Star Fence, on behalf of Sandra Mumford, had requested a variance to allow a 6-foot tall chain-link gated fence in Zone “A”, the decorative fence zone. He continued to explain that Zone “A” permitted fences to be a maximum height of 42” in height, or 3.5 feet. Zone “A” was defined in Section 1276.02 (c)(1)(A) as the area lying between the street right-of-way line and a line parallel to and a minimum of fifteen feet behind the existing front line of the building foundation. Mr. Marlow said that the fence was constructed 11 feet behind the existing front foundation line without a proper permit.

Mr. Marlow stated that the adjacent neighbor at 172 N. Brown School was also in violation of City Code Section 1276.02 “Fences and Walls” and had been notified that they would have to move their 6-foot fence 15 feet behind the front foundation of the home.

Mr. Marlow explained that the owner, Sandra Mumford, submitted a letter of justification in which she explained that she put the fence up for the welfare and security of her dogs and for the safety of herself and her daughter.

Mr. Marlow stated that Staff was recommending the Board of Zoning Appeals recommend denial of the requested variance from City Code Section 1276.02 “Fences and Walls” for the purposes of allowing the already installed 6-foot chain-link gated fence within Zone “A” on property located at 178 N. Brown School Rd.

Mr. Flannery noted that the Applicant was not in attendance.

Mr. Flannery asked if the Applicant’s fence could be moved back. Mr. Marlow stated that there was nothing in the way of allowing either neighbor to move their fence back.

Ms. Aivalotis-Weaver asked what the Applicant meant in their application about the fence going through a glass door. Mr. Prokes stated he believed the fence would intersect with the door and would have to move the fence back even farther. Ms. Holloway stated that the Applicant might believe that she could not access the door.

Mr. Hathaway asked if there was a reason why the Applicant was not in attendance. Ms. Holloway believed that it was Staff’s understanding that the owner, Sandra Mumford, did not live at the property and it was her daughter who had the fence put up and rented the home from her mother.

Mr. Prokes stated that he supported the owner and occupants need for safety however, with the height of the fence only being permitted at 42 inches he still believed it provided a degree of safety to the home owner where the 6-foot fence is a little excessive.

Mr. Flannery stated he saw some high fences in the area, but none that were above 48 inches and were that close to the front like the Applicants was.

Mr. Prokes stated he did not believe it was in character with the neighborhood.

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 did not feel there were any unique physical circumstances or conditions that burden 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 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 they did not believe the property owner purchased the property with knowledge of the zoning 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 requested fence location and height are particularly in character with the neighborhood, however did not feel adjoining properties would suffer a substantial detriment as a result of the variance. Allowing this height of fencing in Zone "A" may set a precedence in the neighborhood.

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

The Board agreed that the predicament could be eliminated by moving the fence 15 feet behind the front foundation of the home.

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

The Board did not feel the intent behind the zoning requirement would be observed by granting of this variance request. City Code Section 1276.02 "Fences and Walls" was quite specific as to what was, and what was not, a decorative fence.

(7) Whether the variance is substantial.

The Board agreed the variance was substantial.

Mr. Prokes made a motion to recommend denial of the variance to City Code Section 1276.02 "Fences and Walls" for the purposes of allowing the already installed 6-foot chain-link gated fence within Zone "A" on property located at 178 N. Brown School Rd.

Ms. Aivalotis-Weaver seconded the motion. The motion passed 4-0.

5. Approval of May 23, 2018 Meeting Minutes

Mr. Hathaway made a motion to recommend approval of the May 23, 2018 meeting minutes. Mr. Prokes seconded the motion. The motion was approved 3-0. Ms. Aivalotis-Weaver abstained from the vote.

Mr. Prokes made a motion to excuse Mr. Fullam.

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

6. Communications

Mr. Marlow stated that the next Zoning Code Steering Committee meeting would be on Tuesday July 10th at 4:30p.m. in the Large Conference Room and there was one item on the July 11th agenda.

Mr. Flannery stated this was Mr. Hathaway's last meeting and it was good having him on the Board.

7. Adjournment

The meeting was adjourned at 6:45 p.m.

Michael Flannery
Chairman