

Minutes of the City of Vandalia Board of Zoning Appeals
September 26, 2018

Agenda Items

1. Call to Order
2. Attendance
3. New Business
 - a. **BZA 18-20** – Variance to City Code Section 1280.09 “Schedule of Parking Spaces” – 260 N. Dixie Drive
 - b. **BZA 18-21** – Variance to City Code Section 1240.05 “Lot Development Standards” – 3131 Stop Eight Road
 - c. **BZA 18-22** – Variance to City Code Section 1262.05 “Lot Development Standards” – 6025 Miller Lane
4. Approval of BZA Minutes of September 12, 2018
5. Communications
6. Adjournment

Members Present:	Mr. Scott Fullam, Mr. Christopher Prokes and Ms. Amber Aivalotis-Weaver
Members Absent:	Mr. Michael Flannery
Others Present:	Will Ashcraft, Jeff Baker, Mike Baker, Christopher Allen and David Marlow

1. Call to Order

Mr. Fullam called the meeting to order at 6:00 p.m. Mr. Fullam 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 October 15, 2018 at 7:00 p.m. Mr. Fullam then swore in those who intended to speak during the public hearing.

2. Attendance

Mr. Prokes made a motion to excuse Mr. Flannery from the meeting. Ms. Aivalotis-Weaver seconded the motion. The motion carried 3-0.

3. New Business

- a. **BZA 18-20** – Variance to City Code Section 1280.09 “Schedule of Parking Spaces” – 260 N. Dixie Drive

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

Mr. Marlow gave the report from Staff explaining that the Applicant, MPower Gym LLC., had requested a variance to allow the expansion of a personal service, being the MPower Gym, without providing the required parking and the Applicant wished to occupy the tenant space at 260 N. Dixie Drive to expand their use which was presently located at 264 & 270 N. Dixie Drive. Mr. Marlow mentioned that City Code Section 1280.02 (f) provides that whenever a building or use constructed or established prior to the effective date of this Code was changed or enlarged to create a new for an increase of ten percent or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. Mr. Marlow noted that City Code Section 1280.09 "Schedule of Parking Spaces" provided that personal service uses have one parking space for each 200 SF of floor area and while this business was located within a shopping center, there were currently seventeen parking spaces serving the three tenant, 12,000 square foot, building across the two properties, where sixty spaces would be required based on the parking ratio. Mr. Marlow said that the 12,000 square foot building was divided evenly with each tenant provided with 4,000 square feet of space and with each 4,000 square foot of leasing space potentially being used as a personal service, 20 parking spaces was required for each tenant.

Mr. Marlow explained that on November 30, 2016 Vandalia Masonic Temple Lodge Association and VNA-Dayton, LLC, agreed upon a Parking Easement Agreement that would allow the tenants at 260, 264 and 270 N. Dixie Dr. to park in the Masonic Lodge parking lot. Mr. Marlow mentioned that the Masonic Lodge parking lot currently had 38 parking spaces and with the additional 17 spaces owned by VNA-Dayton, M-Power Gym had access to 55 parking spaces, where 60 was required.

Mr. Marlow noted that the Applicant had submitted a letter of justification in which they explained that they would like to utilize the neighboring tenant space to divide their 3-core area Sports Performance, Martial Arts, and Fitness with each housed in their own bay and that they have had to limit their young athletes from running the full length of their facility for safety reasons to avoid potential collisions. Mr. Marlow stated that the Applicant mentioned that they have added more equipment, so the additional space would be used to house the fitness equipment and to allow better spacing between equipment.

Mr. Marlow said that the Applicant explained that the 42 overflow parking spaces at the Masonic Lodge were empty most of the time and even during peak times only some of the 10 spaces on the south end of the building were being utilized and that during normal operation at no time was there over 50% of the spaces being utilized.

Mr. Marlow explained that M-Power Gym had said that their busy hours were between 5:30am to 6:30am and 5:30pm until 9:00pm on weekdays and 9am until noon on Saturdays. He continued to explain that M-Power Gym had said that this did not conflict with the retail establishment adjacent to them that closed by 5pm and the Masonic Lodge rarely had more than 10 cars in the evenings, a couple days a month. Mr. Marlow stated that the Applicant noted that the existing lot for the building with 19 parking spaces had been able to more than accommodate the routine traffic with open spaces available at almost all times and their parking utilization should not significantly increase as they would only be separating their business segments into the new space to allow for better spacing of equipment.

Mr. Marlow said that M-Power Gym had mentioned that if the parking variance was granted, they planned on a substantial upgrade of the property to bring it within code along with improvements in the parking lot and building façade.

Mr. Marlow stated that Staff was recommending the Board of Zoning Appeals recommend approval of the requested variance from City Code Section 1280.09 'Schedule of Parking Spaces' for the purposes of allowing the expansion of M-Power Gym into the adjacent tenant space at 260 N. Dixie Drive with the following condition:

- The Applicant, with approval from Masonic Lodge, repair all potholes in the Masonic Lodge parking lot in accordance with Code within 90 days of approval of the variance request

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

Mr. Baker stated that they planned to make a change that would improve the parking dramatically and that was to change their main entrance door to the southern most tenant space which would have an effect on where customers decided to park.

Mr. Prokes asked if M-Power Gym had reached out to Masonic Lodge to let them know they were expanding even more. Mr. Baker answered that yes Masonic Lodge had been notified as they helped M-Power Gym move a few chairs for an event they were having and one of their members was a client of M-Power Gym.

Mr. Baker stated that the Parking Easement covered all three tenant spaces.

Mr. Fullam asked about the maps given to Board by Staff. Mr. Marlow answered that the three tenants shared seventeen parking spaces and the parking lot for Masonic Lodge was what Staff approved of for the striping of parking spaces. He continued to state that M-Power Gym was approved of 42 spaces, but there was only 38 spaces that were striped.

Mr. Baker showed Board a few images on the parking lot at 5:30pm that day. He explained that the parking lot had very few cars parked.

Mr. Marlow stated that the photos provided by Staff were taken at 11:00am on the Friday before the meeting.

Mr. Fullam stated that it seemed this situation had been working out. Mr. Marlow mentioned that Staff had not had any issues. Mr. Baker replied that M-Power Gym had erected signs that informed customers to not park in front of the other businesses.

Mr. Prokes stated he had appreciated the improvements that were being made to that lot and the good positive relationship between the two entities that being M-Power Gym and Masonic Lodge.

Mr. Fullam 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;

Staff Comment: The Board agreed there were generally no unique physical circumstances outside of the fact that the shopping center was divided into separate lots in individual ownership.

- (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;

Staff Comment: The Board agreed there was little opportunity for reasonable use of the property without the variance as there was no room for a parking expansion. Several of the uses permitted in the Zoning District would trigger a change of use and a need to provide the required parking in this location.

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

Staff Comment: The Board did not believe the property owner purchased the property with knowledge of the zoning restrictions; however, the Applicant was aware of the parking requirements and the lack of spaces on the property on which they wish to expand.

- (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;

Staff Comment: The Board did not feel the variance, if authorized, would alter the character of the neighborhood nor would it seem to permanently impair the appropriate use of an adjacent property. They felt that by providing additional parking at the adjacent Masonic Lodge, the Applicant was making an effort to lessen the impact of their parking utilization.

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

Staff Comment: The Board did not feel the owner's predicament could be feasibly eliminated without granting the variance.

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

Staff Comment: The Board felt the intent behind the zoning requirement would be observed as the Applicant has sought alternative options for providing parking.

- (7) Whether the variance is substantial.

Staff Comment: The Board felt the variance request was not substantial as 55 parking spaces were available between M-Power Gym's parking lot and Masonic Lodge's parking lot, where 60 were required.

Mr. Prokes made a motion to recommend approval of the requested variance from City Code Section 1280.09 "Schedule of Parking Spaces" for the purposes of allowing the expansion of M-Power Gym into the adjacent tenant space at 260 N. Dixie Drive with the following condition:

- The Applicant, with approval from Masonic Lodge, repair all potholes in the Masonic Lodge parking lot in accordance with Code within 90 days of approval of the variance request

Ms. Aivalotis-Weaver seconded the motion. The motion carried 3-0.

Mr. Marlow mentioned to the Applicants that their request would be heard at the October 1st City Council study session at 6pm in the Large Conference Room.

Mr. Prokes asked if because the next two items were the same Applicant could they be considered together in conversation. Mr. Marlow answered that yes if Board wanted to discuss both items at the same time that was fine.

b. **BZA 18-21** – Variance to City Code Section 1240.05 “Lot Development Standards”
– 3131 Stop Eight Road

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

Mr. Marlow gave the report from Staff explaining that the Applicant, Hopeland Church, had requested a variance to allow a front yard setback of 40 feet, where 50 feet was the minimum permitted in the Residential Single-Family 1 (RSF-1) Zoning District pursuant to City Code Section 1240.05 “Lot Development Standards”. He continued to explain that the subject property currently maintained a compliant 50-foot front yard setback; however the Applicant was in the process of seeking a replat which would result in the designation of additional right-of-way, causing the property line to be relocated 10 feet closer to the front foundation of the home. Mr. Marlow stated that the designation of right-of-way was required by Vandalia’s Thoroughfare Plan for Miller Lane and Stop Eight Road which required a 70-foot wide right-of-way span to accommodate traffic needs.

Mr. Marlow mentioned that the Applicant had submitted a letter of justification in which they explained that the property was currently undergoing a request for a zoning and plat change to isolate the parsonage from the rest of the property. He continued to explain that the house would still remain zoned residential, while the rest of the property was being zoned to Highway Business. Mr. Marlow noted that the Applicant had said that the plat change would cause the home to be in violation of the front yard setback by 10 feet and they would like to request a variance to satisfy this issue. Mr. Marlow stated that the Applicant had noted that the home was constructed when the local governance was still a township and they were now working toward updating the legal aspects of the property while rezoning the currently contiguous acreage to better fit the future use cases as Miller Lane continued to grow as a commercial area.

Mr. Marlow stated that if the replat and variances were approved, there would be adequate right-of-way designated to widen Miller Lane and Stop Eight Road, if necessary and should the road eventually be widened, such widening would result in the loss of parking spaces for the property at 6025 Miller Lane and the loss of driveway space at 3131 Stop Eight Road.

Mr. Marlow mentioned that Staff was recommending the Board of Zoning Appeals recommend approval of the requested variance from City Code Section 1240.05 for the purposes of allowing a 40-foot front yard setback at 3131 Stop Eight Road with the following conditions:

1. The front yard setback variance at 6025 Miller Lane was approved
2. The rezoning and replat at 6025 Miller Lane and 3131 Stop Eight Road were approved

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

Mr. Allen stated they were trying to clean up the property from a legal standpoint as the property lines were odd as they went right through the building. He continued to state they were trying to buy the land and there was zoning problems where if they tried to divide the land up then the coverage was too much and so they realized this was the best step to take regardless of the future use cases for the field which were either a future larger church facility or a commercial use case such as a restaurant.

Mr. Fullam asked if this affected both sides of the street. Mr. Marlow answered yes, as the replat designated right-of-way which was causing the property lines to be placed closer to the church and house. He continued to state that the map provided to Board showed the existing right-of-way line in red and the proposed right-of-way line in green.

Mr. Prokes stated the property lines were currently three vertically long lines and were changing to more squared off property lines.

Mr. Allen stated that this would help get the properties into better order and all the properties surrounding these properties were zoned Highway Business.

Mr. Marlow stated the church was currently zoned residential.

Mr. Fullam asked if the home was currently owned by the Applicant. Mr. Allen answered correct, but were trying to position the property lines so there was flexibility as they might try to sell the property, or may not, but they want the option and as of now it was impossible to sell the house.

Mr. Allen stated that Stillwater actually owns the entire property and they were currently leasing it, but were in the middle of a contract to purchase the property. He continued to state they were only purchasing the church and Stillwater was keeping the open field and the house, but he had an investor that was most likely going to purchase those properties after they bought the church and hold it.

Ms. Aivalotis-Weaver asked if it matter which item they voted on first. Mr. Marlow answered that they still needed to go through the variance criteria as the criteria had minor changes between the two items as one of the variances was for 5 feet as the other variance was for 10 feet. Mr. Marlow continued to state that Board would need to vote on the house first as it came before the church on the agenda.

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

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;

Staff Comment: The Board felt that there was a unique physical circumstance that burdened the property heavier than another in the same zoning district as the property would become nonconforming in order to accommodate the City's Thoroughfare Plan.

- (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;

Staff Comment: The Board 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;

Staff Comment: The Board did not feel the property owner purchased the property with knowledge of this 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;

Staff Comment: The Board did not feel the character of the neighborhood would be altered as the home was not physically being relocated, only the property line.

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

Staff Comment: The Board did not feel the owner's predicament could be feasibly eliminated through a method other than a variance.

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

Staff Comment: The Board felt that substantial justice would be done by granting the variance. In this unique circumstance, any additional designation of right-of-way would require a variance.

- (7) Whether the variance is substantial.

Staff Comment: The Board did not feel the variance of 10 feet was particularly substantial as the home was not physically being relocated.

Mr. Prokes made a motion to recommend approval of the requested variance from City Code Section 1240.05 for the purposes of allowing a 40-foot front yard setback at 3131 Stop Eight Road with the following conditions:

1. The accompanied front yard setback variance at 6025 Miller Lane was approved
2. The accompanied rezoning and replat at 6025 Miller Lane and 3131 Stop Eight Road was approved

Ms. Aivalotis-Weaver seconded the motion. The motion carried 3-0.

- c. **BZA 18-22** – Variance to City Code Section 1262.05 “Lot Development Standards” – 6025 Miller Lane

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

Mr. Marlow gave the report from Staff explaining that the Applicant, Hopeland Church, had requested a variance to allow a front yard setback of 35 feet, where 40 feet was the minimum permitted in the Highway Business Zoning District pursuant to City Code Section 1262.05 “Lot Development Standards”. He continued to state that the subject property currently had a 40-foot

front yard setback and was zoned Residential Single-Family 1, however was in the process of rezoning the property to Highway Business and replatting the property, which would relocate the front property line 5 feet closer to the front foundation of the church, due to the additional designation of right-of-way. Mr. Marlow noted that the designation of right-of-way would meet Vandalia's Thoroughfare Plan for Miller Lane and Stop Eight Road which required a 70-foot wide right-of-way span to accommodate traffic needs. Mr. Marlow mentioned that the variance request was accompanied by another variance request, a plat request and a rezoning request.

Mr. Marlow mentioned that the Applicant had submitted a letter of justification in which they explained that the property was currently undergoing a request for a zoning change from Residential Single-Family 1 (RSF-1) to Highway Business (HB) as well as a plat in order to divide the land more logically for practical use. He continued to mention that the Applicant had said that the resulting zoning and plat change would cause the facility to be in violation of the front yard setback by 5 feet and he would like to request a variance to satisfy the issue. Mr. Marlow noted that the Applicant had stated that when the facility was initially constructed roughly 60 years ago, there were substantially different circumstances making it difficult to have foreseen these problems, such as Stop Eight being the primary access street, while Miller Lane was a dirt road, as well as the fact that it was a part of Butler Township at the time.

Mr. Marlow stated that if the replat, rezoning and variances were approved, there would be adequate right-of-way designated to widen Miller Lane and Stop Eight Road, if necessary and should the road eventually be widened, such widening would result in the loss of parking spaces for the property at 6025 Miller Lane and the loss of driveway space at 3131 Stop Eight Road.

Mr. Marlow mentioned that Staff was recommending approval of the requested variance from City Code Section 1262.05 for the purposes of allowing a 35-foot front yard setback at 6025 Miller Lane with the following conditions:

1. The accompanied front yard setback variance at 3131 Stop Eight Road was approved
2. The accompanied rezoning and replat at 6025 Miller Lane and 3131 Stop Eight Road were approved

Mr. Fullam stated that Board had already had their discussion during the previous item and so he closed the public hearing and continued to proceed through the variance criteria.

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;

Staff Comment: The Board felt that there was a unique physical circumstance that burdened the property heavier than another in the same zoning district as designation of required right-of-way would cause such nonconformity.

- (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;

Staff Comment: The Board 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;

Staff Comment: The Board did not feel the property owner purchased the property with knowledge of this 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;

Staff Comment: The Board did not feel the character of the neighborhood would be altered as the church was not physically being relocated, only the property line.

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

Staff Comment: The Board did not feel the owner's predicament could be feasibly eliminated through a method other than a variance.

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

Staff Comment: The Board felt that substantial justice would be done by granting the variance as other properties zoned Highway Business in the surrounding area have similar front yard setbacks as the church and in this unique circumstance any additional designation of right-of-way would require a variance.

- (7) Whether the variance is substantial.

Staff Comment: The Board did not feel the variance of 5 feet was particularly substantial as the church was not physically being relocated and as noted earlier other properties zoned Highway Business in the surrounding area have similar front yard setbacks as the church.

Ms. Aivalotis-Weaver made a motion to recommend approval of the requested variance from City Code Section 1262.05 for the purposes of allowing a 35-foot front yard setback at 6025 Miller Lane with the following conditions:

1. The accompanied front yard setback variance at 3131 Stop Eight Road was approved
2. The accompanied rezoning and replat at 6025 Miller Lane and 3131 Stop Eight Road were approved

Mr. Prokes seconded the motion. The motion carried 3-0.

Mr. Marlow stated that the item would be discussed at the October 1st Council study session at 6pm in the Large Conference Room.

Mr. Allen asked about the study session. Mr. Marlow answered that the study session was where Council would hold a similar meeting as the one conducted that night and might have a few questions for the Applicant.

Mr. Allen asked if it was a learning session. Mr. Marlow answered yes.

Mr. Prokes stated it might be the only time he had to address Council in a public setting.

Mr. Marlow stated the Applicants requested replat and rezone would also be at Council's study session on October 1st and all the items would be voted on October 15th.

4. Approval of September 12, 2018 Meeting Minutes

Ms. Aivalotis-Weaver made a motion to recommend approval of the September 12, 2018 meeting minutes. Mr. Prokes seconded the motion. The motion was approved 3-0.

5. Communications

Mr. Marlow stated that there was one item on the October 10th BZA agenda for a fence at 268 Allanhurst Avenue and the city would hold a public meeting on October 9th at 6pm in the Large Conference Room as Wendy from Compass Point Planning to discuss the progress of the zoning code rewrite.

Mr. Marlow stated Planning Commission would make a recommendation to Council on October 23rd for the zoning code rewrite and Staff was hoping the proposed zoning code would go into full effect on January 3rd.

Mr. Fullam stated he would not be in attendance for the October 24th meeting.

Mr. Prokes stated he would not be in attendance for the October 24th meeting.

Adjournment

The meeting was adjourned at 6:36 p.m.

Scott Fullam
Vice-Chairman