

**Minutes of the City of Vandalia Board of Zoning Appeals**  
**October 10, 2018**

**Agenda Items**

1. Call to Order
2. Attendance
3. New Business
  - a. **BZA18-23** – 268 Allanhurst Ave. – Variance to “Fences and Walls” *City Code Section 1276.02*
4. Approval of BZA Minutes of September 26, 2018
5. Communications
6. Adjournment

<b>Members Present:</b>	Mr. Michael Flannery, Mr. Scott Fullam, Mr. Christopher Prokes and Ms. Amber Aivalotis-Weaver
<b>Members Absent:</b>	
<b>Others Present:</b>	Larry Schmitz, Emily Keeley 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 November 5, 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 a quorum of members was present

**3. New Business**

- a. **BZA18-23** – 268 Allanhurst Ave. – 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, Larry Schmitz, had requested a variance to allow a 6-foot wood fence with the supporting posts located on the side facing the exterior of the property. Mr. Marlow stated that City Code Section 1276.02(c)(1)(C)(1) states, “All supporting posts must be located on the side facing the interior of the property upon which the fence or wall was located”.

Mr. Marlow noted that the Applicant obtained a permit in August of 2018 where the approved site plan provided that "Structural supports and posts must be located on the side facing the interior of the property". He mentioned that when the Applicant contacted the Engineering Department to schedule a final inspection for the fence he mentioned to a Staff member that he did not locate the supporting posts on the side facing the interior of the property for the portion of fencing adjacent to the property at 248 Allanhurst Avenue.

Mr. Marlow stated that the Applicant had submitted a letter of justification in which he explained that the neighbors fence had pickets on the wrong side also and that the fences were back to back.

Mr. Marlow explained 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 wood fence with the supporting posts located on the side facing the exterior of the property at 268 Allanhurst Avenue.

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

The Applicant showed the Board photos of the recently erected fence and explained that you could not see the supporting posts unless you looked over top of the six-foot fence.

Mr. Fullam asked whether the supporting posts were only on one side of the property. Emily Keeley answered that the other fence had the supporting posts on the interior and that it was only the adjoining fences that had the posts on the exterior.

Mr. Prokes asked if it was the fence that bordered the property at 288 Allanhurst Avenue was the fence with the posts on the exterior. Emily Keeley replied yes. The Applicant mentioned that he could not fit back behind the fence.

Mr. Prokes stated that his first question was when he first looked at the pictures he recieved it seemed narrow between the two fences and you would have to drill backwards which would not give you much support. He continued to state that the fence seemed pretty hidden from the street.

Mr. Fullam asked Staff whether the neighbor received a permit. Mr. Marlow stated that the neighbors fence was very old and Staff did not have any information on record for it which meant either they erected the fence without a permit and Staff never caught it or it was so old we did not have anything on record for it as it was probably over 20 years old when Staff only had hard copies of records and when Staff switched over to an online program to store documents some records could had been lost. He continued to state the Staff did not whether they received a permit and it was lost in the transitioning from hard copies to online copies or they erected the fence without a permit and there was a good chance no current Staff member was around when the fence was erected.

Mr. Marlow stated that one of Staff's concerns was because the neighbor's fence was old that if they were to ever decide to take it down or a new owner decides to take it down and because their neighbor at 268 Allanhurst Avenue had their supporting posts on the exterior they might want to place their supporting posts on the exterior or say they put up a 4-foot fence and then they could see the supporting posts on the 6-foot fence. Mr. Marlow continued to mention that as of now it wasn't a big issue but with the condition the neighbor's fence was in it could be taken down or removed within the next 10 years.

The Applicant stated that when he put up the fence he asked the neighbor that he would be willing to take down his fence for \$300 and he would get a new fence but the neighbor said no.

Mr. Prokes asked from an engineering standpoint with there being no room in between the two fences what would have been their alternative had been. Mr. Marlow answered that when he went out for the final inspection he did not see any physical structures that would not had allowed the fence to be moved a foot or two further into the property which then someone would had been able to fit in between the fences.

Mr. Prokes asked where the fence was in relation to the property line. The Applicant stated that the fence was probably a foot in from the property line. Mr. Prokes mentioned that if they moved the fence another foot it would take away another foot on a small lot.

Mr. Fullam asked the Applicant whether he knew he was supposed to put the fence in the other way. The Applicant answered that if he could have fit back there he would of.

Mr. Fullam asked if the fence were erected in pieces. The Applicant answered they were put in as individual pickets.

Emily Keeley stated the fence they replaced also had its supporting posts on the exterior. Mr. Prokes replied that suggest the neighbor at 248 Allanhurst Avenue probably put their fence in the same way because of that.

Mr. Fullam asked in Staff's experience in other situations if someone wanted to put up a fence where their neighbor already had a fence if they had to simply move it into their property far enough to get back between the fences. Mr. Marlow answered that a resident wanted a pre-inspection for a fence they wanted to put up where they were in the same boat as they had an existing fence with the posts on the exterior and were hoping to keep the posts on the exterior and Staff told them they could not to do that and so they moved the fence a little farther into the property just so they could put the posts on the interior. He continued to state it was a common issue and that Staff understood where residents were coming from but in the past have had residents comply with the posts being on the interior. Mr. Fullam asked if it was the same circumstance as this one where the fences were next to each other. Mr. Marlow answered yes. The Applicant asked where those fences were located. Mr. Marlow answered it was on Vista Avenue, but could not remember the exact address.

The Applicant stated you can not see the back of the fence.

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 did not have a consensus agreement on whether the property had a unique physical circumstance due to some of their beliefs that the lot was more narrow than other lots in the same zoning district.

Mr. Prokes stated there was small lots in the area and to build the fence farther into the property would reduce the lot size even more. Mr. Fullam stated he agreed with Staff's comment that there was not a unique circumstance. Ms. Aivalotis-Weaver stated she agreed with Mr. Proke's comments. Mr. Flannery stated he agreed with Mr. Proke's comments.

**(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 felt 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 did not believe the property owner purchased the property with knowledge of the zoning restrictions; however, Board believed the Applicant who built the fence did have knowledge of the zoning restrictions before erecting the fence.

**(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 location of the supporting posts were particularly in character with the neighborhood as the only other fence in the neighborhood, to their knowledge, with the supporting posts on the exterior was the neighbor at 248 Allanhurst Avenue, however did not feel adjoining properties at the time would suffer a substantial detriment as a result of the variance. The Board did not have a consensus agreement on whether the fence would cause a substantial detriment if the neighbor at 248 Allanhurst Avenue were to ever replace or remove their fence.

Mr. Prokes stated that because the way the fence was designed it blocked the view of the exterior posts unless you were looking at it from a certain angle. Mr. Fullam stated that if he was the new owner of 248 Allanhurst Avenue and he wanted to replace the fence with a 4-foot fence then he would be looking at the exterior posts of someone else's fence.

Mr. Flannery and Ms. Aivalotis-Weaver agreed with Mr. Proke's comments.

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

The Board felt the predicament could be eliminated by relocating the supporting posts on the side facing the interior of the property.

**(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 the variance request. City Code Section 1276.02 "Fences and Walls" was

quite specific as to where the supporting posts must be located and was mentioned again on the site plan.

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

The Board felt the variance request was substantial.

Mr. Fullam made a motion to 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 wood fence with the supporting posts located on the side facing the exterior of the property at 268 Allanhurst Avenue.

Mr. Prokes seconded the motion. The motion was denied 3-1 as Mr. Prokes, Mr. Flannery and Ms. Aivalotis-Weaver voted against the recommendation of denial.

Mr. Marlow noted that the item would move forward to Council as a 3-1 recommendation of approval.

Mr. Marlow informed the Applicant that the item would be discussed at the October 15th City Council Workshop at 6:00p.m. in the Large Conference Room.

**4. Approval of September 26, 2018 Meeting Minutes**

Mr. Prokes made a motion to recommend approval of the September 26, 2018 meeting minutes. Ms. Aivalotis-Weaver seconded the motion. The motion was approved 3-0. Mr. Flannery abstained from the vote.

**5. Communications**

Mr. Marlow stated that the scheduled October 24<sup>th</sup> Board of Zoning Appeals meeting had been cancelled due to not having a quorum.

Mr. Fullam asked if Staff was still trying to fill the last Board position. Mr. Marlow that Amber Holloway had been in contact with Donna Wright about possibly joining.

Mr. Flannery stated he would be applying for a variance soon as he had a barn in the front yard.

**6. Adjournment**

The meeting was adjourned at 6:27 p.m.

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**Michael Flannery**  
Chairman