

Board of Zoning Appeals  
May 19, 2016  
Minutes

Chairman Feick called the meeting to order at 4:34 PM. The following members were present: Mr. Kevin Zeiher, Dr. William Semans, Mr. John Mears, and Mr. John Feick. Also present were Ms. Angela Byington and Ms. Casey Sparks from the Planning Department, Mr. Justin Harris and Mr. Trevor Hayberger from the Law Department and Debi Eversole as Clerk

There were four voting members present.

Chairman Feick asked for discussion of the meeting minutes from the April 21, 2016 meeting. With no discussion, Mr. Mears moved to approve the minutes as presented. Dr. Semans seconded the motion. Motion passed, all in favor.

Chairman Feick swore in audience and staff members and explained that there will be an opportunity to speak for and against each application.

Ms. Sparks briefed the room that Richard and Judy Kinzel have filed an application for a variance to allow a decorative four foot wrought iron fence with 6' high brick piers to be located within the front and side yard at **2267 Cedar Point Drive**. The property is zoned "R1-75" Single Family Dwelling and surrounded by single family residential uses and the parking area for Cedar Point. The applicant is proposing to place the fence within the side and front of the property, however it will only be located along the eastern portion of the property. The applicant has stated that the proposed location and intent of the fence would make it difficult to meet required height requirements per zoning code. Staff recommends approval of the 4' decorative fence and the 6' brick piers as it will not adversely affect the adjoining property owners. This lot is somewhat unique as it abuts the parking area for Cedar Point and may receive some additional pedestrian traffic due the large number of visitors in this area, as such Staff can understand the need for a higher fence that permitted by the code.

Ryan Griggs, 222 Neil Street stated that the fence would be strictly for security and privacy. He is the contractor for the applicant.

Dr. Semans stated that after attending the transient rental meeting, he was in full support of the variance and moved to approve the application. Mr. Zeiher seconded the motion. Roll was called and the motion passed, all in favor.

Ms. Sparks briefed the room that Fredrick Farris has submitted an application for a variance to permit the construction of an accessory structure and fence at **1131 E. Farwell Street**. The current site is vacant and zoned as "R1-50" Residential Single Family. The applicant has proposed to construct a 10' x12' utility shed and erect a 6' chain link fence which would be constructed in the front and side yard. The zoning code allows temporary structures to be placed on the lot prior to construction, however a building permit must be issued. To date Staff has not received a building permit for this location. The zoning code only permits a 4' fence within the side yard and a 3' decorative fence within the front yard. Staff is recommending denial for the request to construct the accessory structure prior to construction of the main residence, however if a building permit application is approved a temporary structure would be permitted on site. The applicant has not indicated a hardship as to why a fence would be required on the site before the main structure is approved. Staff has concerns with allowing a fence to be constructed on the lot when no building permit has been approved.

Antonio Thomas, 609 Prospect Street stated that Mr. Farris only wants to put up a 4' fence, not 6' as indicated. The reason the shed is needed would be for storage of his equipment used to build a house.

Fredrick Farris, 1114 C. Street, stated that he will have a shed brought to the property, not built on the property.

Adrian Harris, 1108 Farwell Street stated that her understanding was that a temporary structure would be brought to the property and was never informed that a residence would be built on the property. She claimed that the property owners have worked hard to make this area a nice residential street. She felt that the storage shed with a fence around it would detract from what the neighborhood has strived to achieve. She objects to the application.

Gaye Harris Myles, 418 Snowcourt owns property on Farwell Street and agreed with Ms. Harris that her understanding was that there was no building permit for a permanent structure and that the shed would be the main structure on the property. She wanted the neighborhood to stay in line with how it is zoned, and that is "Single Family".

Ms. Sparks clarified that the application was for a 10'x12' shed as well as the fence, which has now been confirmed as a 4' fence. Staff recommended denial based on the fact that there was no building permit applied for nor plans for a permanent structure or residence.

Sharon Harris, 1125 Farwell Street stated that she shares a property line with Mr. Farris and her concern was that a 6' privacy fence would be hazardous coming out of the driveway. She also stated that she was concerned about what the structure would be used for and how long before an actual residence would be constructed. She stated that the property values are on the rise and that fencing in a structure would look like a prison was dropped in her neighborhood.

Chairman Feick asked if anyone else wished to speak, then asked for comments from the board. He stated that he will abstain as he has a conflict due to selling the property and owning the property next door.

Dr. Semans asked for confirmation on the height of the fence. Mr. Harris stated that he was sure that Mr. Farris wanted a 4' fence and that there was an error in the application.

Mr. Zeiher noted that within the paperwork submitted, a quote from Fremont Fence was for 6' chain link fence.

Mr. Howard Harris spoke about the application and that he helped Mr. Farris prepare it and nothing was said about a 6' fence and that the temporary shed would be used to hold his tools so that he could build a house.

Ms. Sparks stated that there would still be an issue with putting up a fence with no main structure on the property.

Dr. Semans moved to deny the application for the variance for a 6' fence or any fence that is outside what code allows. Mr. Zeiher seconded the motion. Roll was called and the motion for denial passed, all in favor. Chairman Feick abstained from the vote.

Mr. Farris asked if he needed a building permit. Mr. Feick stated that only the fence has been denied, the shed has not been voted on yet.

Mr. Harris asked why the board denied a variance for a fence if the fence would be constructed under code regulations. And now that there is no variance required why would it be denied. Mr. Zeiher answered that per code regulations, a fence cannot be constructed without a permanent structure and there is no building permit to date for a permanent structure.

Chairman Feick stated that there is still a variance for a shed on the table. Mr. Farris stated that the shed would not be constructed; it would be brought in built. Chairman Feick stated that if Mr. Farris applied for a building permit, that permit would be good for one year and he could then bring in a drawing of what will be put there.

Dr. Semans moved that the variance be denied due to the fact that the shed has been proposed with no permanent structure on the property. Mr. Zeiher seconded the motion. Roll was called and the motion for denial passed, all in favor. Chairman Feick abstained from the vote.

Ms. Sparks briefed the room that David Harpel has filed an application for a variance to allow a 6' fence within the side yard at **330 1/2 Fulton Street**. The subject property is zoned "R2F" Two- Family Residential and is surrounded by one and two family dwellings. The applicant has already constructed a 6' privacy fence within the side yard, however the applicant never received a permit for the fence. The property also has several property maintenance issues within this location and has been working with Code Enforcement to alleviate these issues. The lot is a corner lot but per section 1107.01(o)(7) indicates the front lot line to be the shortest lot line, as such the lot has a very limited to no rear yard. The applicant has indicated that he has had several issues with theft and would like to utilize this area to store items on his property, the applicant stated that a 6' fence is required to protect these items. The applicant has discussed with Staff some different options for the location and design of the fence, Staff would encourage the Board to discuss this with the applicant. Staff is recommending approval of the 6' fence located within the side yard, as this property is unique in that it does not have a rear yard and staff believes that this fence will assist in alleviating some of the property maintenance issues on the site. Staff recommends approval of the variance with the conditions that the applicant remove the existing 6' fence and the fence be placed a minimum of 5' from the property line to alleviate any potential line of site issues.

Ms. Sparks asked the board members to refer to site plan provided in their packet. The proposed fence would come off about 15' from the existing 6' fence. The applicant also suggested curving the fence similar to the other 4' fence. Staff would recommend staying away from the sidewalk a minimum of 5' so that there is not a line of sight issue. This structure is a 2 family residence. The 4' fence on one side will serve that unit and the 6' fence would be for his residence. He requested a 6' fence to eliminate theft issues that he has had in the past.

Dave Harple, 330 Fulton Street stated that the minimum of 5' would not allow for his car to fit. He has pictures to show that when you're stopped at the stop sign, you can see 85' down the street. The 5' minimum would not allow this. He suggested 2'.

Mr. Zeiher stated that there have been code enforcement issues with storage in the yard and screening these areas. Ms. Sparks confirmed that Mr. Harple and Mr. Mullins, City Code Enforcement Officer have been working together to try to resolve these issues. This is another reason that he installed the 6' fence.

Dr. Semans asked where the 4' curved fence and 6' fence was located. Mr. Harple answered that the 4' curved area was at his patio and the 6' fence was approximately 15' from the structure to sidewalk.

Mr. Mears asked what type of fence he would be putting up. Mr. Harple answered that he wanted a cement brick wall but now it will be a dog ear fence.

Dr. Semans stated that he understands the need for the fence but is concerned about sightlines for the car next door. Mr. Harple said that he talked to his neighbors and there is almost 12' of view when they back out. Mr. Mears stated it would not only be the people backing out to see, but there are children on the sidewalk running and riding bicycles. He felt he would be creating a blind spot. Mr. Harple stated that the bushes were just as tall.

Dr. Semans asked how far the existing fence was from the sidewalk. Mr. Harple stated that it was 8' from the structure and another 12' to 14'.

Ms. Sparks confirmed if the fence would be curved and asked what the distance would be from the sidewalk once it was curved. Mr. Harple answered the straight part would be 2' from the sidewalk.

Ms. Sparks asked Mr. Harple to draw on the site plan how he wants to modify his application so that the Board members could get a clear picture of what he is proposing. Chairman Feick confirmed that Mr. Harple would take down the existing fence.

Mr. Zeiher moved to approve the variance as long as there is a 2' space between the fence and sidewalk. It will be square to hold the gate, and then be rounded. Dr. Semans seconded the motion. Roll was called and the motion passed, all in favor. Chairman Feick abstained.

Ms. Sparks briefed the room that Dan McGookey has filed an application for a variance to allow the creation of a Non-Conforming Lot at **629 Washington Street** within the "R2F" Two-Family Residential Zoning District. The applicant is also proposing a variance of 1' to the required side yard setback and a 15' variance to the rear yard setback within the "DBD" Downtown Business District. The applicant has applied to rezone the northern portion of this site to Downtown Business District, the Planning Commission recommended approval of the rezoning pending the variances regarding the Non-Conforming Lot and the setback for the existing building were approved. It is the intent of the applicant to split the northern portion of parcel 56-01214.000 (629 Washington Street) and combine this with the adjacent parcel on Meigs Street. The remaining lot would create a Non-Conforming Lot of 3,186.49 square feet. The minimum lot size within the Two Family Zoning district is 4,300 square feet. Staff does recognize that this is a substantial variance, however there are lots of similar size within the adjacent area. The applicant is proposing a 14' side yard setback whereas the code requires a 15' side yard setback within the Downtown Business District. The applicant is also proposing a 5' rear yard setback, whereas the code requires a 20' rear yard setback when abutting residential zoning district. The applicant is proposing to utilize this building for a brewpub. The comprehensive plan calls for Mixed Use within this area, understanding that the adjacent parcel has received site plan approval for a commercial use similar to what the applicant is proposing at this site, Staff does not believe it will be a detriment to the area. Further site plan approval through Planning Commission will be necessary for this type of use. Staff recommends approval of the requested variances with the condition that the applicant provide a 6' high privacy fence adjacent to the any of the residentially zoned parcels to assist with screening.

Chairman Feick stated that although he does not have a conflict with this application, he had submitted comments and cannot be partial so he will abstain from voting on this application.

Dan McGookey, 225 Meigs Street, addressed the Board to state that the survey map tells the story of what they are trying to do. The surrounding neighbors are in support of the application. Mr. McGookey has made many improvements and will continue to make improvements and keep privacy for the

surrounding neighbors. The back of the lot will be used as a tap house. The bait shop at 215 Meigs Street will be a brewpub.

Mr. Zeiher asked for clarification as to which parcel was the bait shop. Mr. McGookey pointed out 215 Meigs Street.

Dr. Semans clarified that the bait shop at 215 Meigs Street will be used as the brew pub and the back building at 629 Washington Street will be used in conjunction with the brew pub but the buildings will not be on the same lot. Mr. McGookey added that there is a possibility in the future to legally adjoin all of the parcels to make one large parcel.


Dr. Semans asked if it would be more manageable to try to combine all properties now. Ms. Sparks stated that the applicant had discussed his future plans with Staff but he would like to keep all separate for now.

Dr. Semans moved to approve the application. Mr. Zeiher seconded. With no further comments, roll was called and the motion passed, all in favor. Chairman Feick abstained.

With no further business, meeting was adjourned at 5:22 PM.

APPROVED:

  
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Debi Eversole, Clerk

  
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John Feick, Chairman