

BOARD OF ZONING APPEALS MEETING
THURSDAY, MAY 26, 2022 5:30 P.M.
COUNCIL CHAMBERS
40 W MAIN ST, NEWARK, OH 43055

MINUTES
PUBLIC HEARING

1. CALL TO ORDER

CALL TO ORDER- Steve Layman Board Chair called the Thursday May 26, 2022 Board of Zoning Appeals Meeting to order.

Present:	Steve Layman	Board Chair
	Jack Gienger	Member
	George Carter	Zoning Inspector
	John Paul	Member
	Phil Claggett	Member
	Eddie Hunt	Member

2. APPROVAL OF MINUTES

Minutes of the April 28, 2022 meeting

Motion and second to approve minutes of April 28, 2022, motion passed by acclamation

3. OLD BUSINESS

4. NEW BUSINESS

APPLICATION BZA-22-08

Applicant: Jessie Porter

Owner: Titus Porter

Location: 109 Roe

Project: Fence

Reference: 88.1

Jessie Porter – Right now we have along here a four foot fence and we're just asking to put 6 foot along the road this way, there is a sidewalk and a grass curb that I believe would be a five foot difference. I just want it here and along the back of the property. We've got small children, we live at a dead end, there is nobody living diagonally from us and only one person uses the alley behind us. I just want to keep my kids safe, people run stops signs all the time, they fly down the road and it's pretty scary when you've got two little kids and they can't even enjoy their back yard.

Mr. Layman – **A motion has been made to approve the variance and it has been seconded conditional on having a 25 foot clearance at the southeast corner of the property.**

The Variance is approved with a conditional 25 foot clearance at the southeast corner.

APPLICATION BZA-22-09

Applicant: Troy Boyce

Owner: Troy Boyce

Location: 145 S. Clinton St.

Project: Fence

Reference: 88.1

Troy Boyce – What I would like to do is put a six foot fence around the entire property at the corner of St. Clair and Clinton Street. The entrance will be on Clinton Street. The reason for the six foot fence is I'm going to park my semi truck there and want to be certain it is absolutely safe. I am planning on putting in each corner of the lot security cameras. The fence will be about 30 feet from the corner.

Mr. Layman – There has been a motion and a second to approve, conditional on there being a clear line of sight 25 feet off the north east corner of the property.

The Variance is approved with the condition of 25 foot clearance on the north east corner.

APPLICATION BZA-22-10

Applicant: Josh Darfus

Owner: Darfus Real Estate Management LLC

Location: 398-400 Mt. Vernon Rd.

Project: Post-Frame Retail Building

Reference: 46.8

Jarod Rose, representing Mr. Darfus – I have a couple documents I would like to provide to the Board. These are copies of the street view and the proposed setback of the building. We are here to request several setback variances on the property. To give you a background, my client became aware the land was vacant in the winter of 2022, began negotiations with the property owner and purchased the property in April of this year. Some of you may be familiar with the property, for years it was home to the Barking Box, a local pet grooming business, unfortunately following a fire at the building in 2019 it did have to be demolished. The documents I provided show the previous characteristics of the building, it was a 40 x 75 foot structure and actually as a result, the structure when it was erected met setbacks imposed by the City Code. The property is zoned Medium Intensity Business District pursuant to Article 36 of the City Code. The setback requirements include 30 feet for the front yard, 25 feet for the side yards and 40 feet in the rear yard because the property abuts Residential District. As a result of these setback requirements it is functionally impossible for a person or entity to build a structure without seeking a variance to modify the setback requirements. If the front of the property is deemed to be Mt. Vernon Rd., the setback requirements for the side is 25 feet, since the property is only 50 feet wide this would create a buildable zone of zero feet on either side. Additionally, if the front of the property is deemed to be West North Street, the rear setback requirement is 40 feet and the front setback requirement is 30 feet, as a result there is a negative 20 foot of buildable land on the property. Regardless which side Mr. Darfus deems to be the front of his property it is impossible for him or for anyone else who occupies the land to develop a building on the property. The Code Section is quite clear 150.8.2 states that whereby the exceptional narrowness, shallowness or the unusual shape of a specific piece of property existing on the effective date of this code, the literal enforcement of the requirements would involve practical difficulty or would cause unnecessary hardship the board may grant a variance, which is exactly what we are hear seeking to do this evening gentleman. The narrowness of this lot and the setback requirements induces a hardship on any person wishing to develop land and turn it into an economically prosperous property. Mr. Darfus' building goals are modest, he is wishing to erect either a 48x24 or 60x28 foot retail sporting goods store on the premises, as a result he is seeking a side front and rear setback variance to make the property economically viable for both himself and the community. The building would be far smaller than the building that housed the Barking Box prior to it becoming a vacant lot. If no zoning variance is granted the property will likely remain vacant and unproductive for the City, the property owners and the community. This variance application to modify the setback standards presents an opportunity I believe for both the community and my client. It is an opportunity that should not be overlooked by this board. A useful design, name brand sporting goods store increases not only the tax base for the community, but also retail options for clients within

the City of Newark, therefore Mr. Darfus is requesting the board grant his variance, thank you for your time this evening and please let me know if you have any questions.

Mary Mendicino, 391 Hudson Ave. – I'm at the corner of North and Hudson, which used to be known as the Art Gallery. My question is, being that I live right there on that corner, traffic is crazy there and I didn't see how this building would allow for parking. North Street is very short and already parking there is terrible. So, I'm not really against it, I just want to kind of understand.

Carol Ault – I own the property next door to this. There is no parking. When the Barking Box was there, they were continually parking on our lot. This was a continual annoyance. At least with the Barking Box people were just getting their dog and leaving. I don't agree with this. Not only that, this is a very high crime area, my house has been broken into many times. You're putting a small business next door, no, I don't agree with it at all.

Resident of 27 W. North Street – There is no parking, people park in front of our driveway and everything.

Carol Ault – My son has lived there in that house in the past and he knows that it's continual parking problems. I live there part time and the entrance to our property is not very wide and the property next door is on the corner and there's traffic and a lot of things going on there, it's really busy in that area, especially traffic pulling out, of course I know there would be better setbacks where they could see better than when it was the Barking Box because the Barking Box was right up against the sidewalk, but then again, our property is so close to it that it would create parking on us. It would not be a good situation for us.

Mr. Layman – I think we have a problem. You need three votes and I'm not sure you have three votes as you submitted. Your point about the use for the property is well taken, but what you've given us doesn't solve the problem for the neighbors, which is a serious concern. You have customers and employees who have to go someplace and I don't know that your site plan provides for that. What I would like is for you to spend some time with an engineer or an architect and figure out how to get at least 3 or 4 parking places on that piece of ground and if you can do that, come back to us and we'll talk about it. We can grant variances, we can take it back if that creates 3 or 4 parking places, what you've given us on its face, we can take a vote, but I don't think you will get three votes. What you can do is request to table, work with an engineer, talk to your neighbors, show them your design, come here next month and hopefully you've done your homework and convinced your neighbors that what you want is reasonable and if not, they will be free to say they don't agree.

Mr. Rose – If I may, Table it. I do know that centering the building was done on a recommendation, but I don't think my client had any particular reason to center it, we are more than happy to work with the community.

Mr. Layman – I would engage with an engineer and come back with a real drawing with real measurements and real parking spaces shown and then if you need a zero setback on Mt. Vernon Rd., that's not out of the questions, there are properties on the sidewalk on Mt. Vernon Rd.

Mr. Rose – if I may I would like to request the application be tabled for the time being.

Motion to table, second and approved by acclamation

APPLICATION BZA-22-11

Applicant: Melisa Bay

Owner: Cottage Barbershop LLC

Location: 401 Franklin Ave.

Project: Storage Pods

Reference: 86.3.1

Melisa Bay – All of my structures are in Heath. I want to put two 20 foot storage pods on my Newark side and he said I have too many structures. I pay property taxes and have nothing on it, but I want to be able to use that piece of property. The place where there are structures are in Heath and where I want to put containers are in Newark and there are

no structures on the Newark side. They are actually storage moving pods they are not a structure. They aren't permanent, they are movable and there are a lot of businesses around Newark and residential people that have the PODS. Dona and Sues. There's one down by Brewsky's on the corner, there is one down off of Union Street. What I am wanting to use these for is I'm downsizing my house, trying to move, I am zoned commercial, agricultural and residential, so that's the reason I want to use the PODS and they are not a structure. They are considered movable storage.

Matthew Gayheart, 111 Franklin, Newark, Oh – I live next door, my property butts against this property. It is technically one property and it is split by a city limit line on the map. There are four permanent structures on the land, they are all four completely full, there are two additional structures that have been brought in and they are wanting to add two more. That would be a total of eight structures on the property. The question the other neighbors and I have is shipping containers are considered a temporary storage, is that correct?

George Carter – At this time shipping containers used for storage are considered accessory structures and need to abide by the accessory structure part of the zoning code.

Mr. Gayheart – Is there a time limit those can be used for.

Mr. Carter – They are classified as a permanent structure by my office.

Mr. Gayheart – So the code reads they are allowed two accessory structures?

Mr. Carter – The code reads they are allowed two accessory structures per lot.

Mr. Gayheart – So there would be four in that small area. The general consensus of the neighborhood is that hoarders ought to be called because there are four structures that are completely full and now were adding four more structures. The problem is I don't know anyone in this room that is a resident of the City of Newark that needs eight buildings full of stuff. There are storage units for rental all over the city. This is a residential neighborhood, we do all get a long, I don't think anybody here would like shipping containers that are multi colored, rusted brought in and put beside your house. The examples they presented are commercial businesses in business areas. This is a residential area with no other businesses in the area it is all completely residential. So, the general consensus of the area that the letters were sent out to is that we don't need any more shipping containers in our neighborhood.

Will Carter, 410 Royal Oaks Ln, Heath, Oh – I have helped Ray and Melisa clean up their property because of this person right here complaining constantly, they are in litigation right now because he tore down a 6 foot privacy fence they had, this is a two acre lot. They owned the fence at one time until he tore it down all the way to the back to the Maennerchor and it was a 6 foot privacy fence and what he put back was not a privacy fence it was a chicken fence. He re excavated it so there is a change in elevation, Ray when he put up the fence some 20 years ago, made it flow with the property. That's the first thing, that's in litigation. He's been complaining constantly about the mess, I've helped Ray and Melisa clean up the mess and they are putting it away. On one hand, you can't complain that they are full of stuff, because that's not his business whether they have stuff in there or not, they are trying to consolidate now to try to sell their house and live down there and transition in their life. All they are trying to do is bring stuff out of their house so they can sell that house. I'm sure he noticed the property is cleaned up, am I correct? I don't understand this whole deal where they are trying like crazy to help out the neighborhood, they've had a lot of break ins, by the way, they are trying to secure things because once they get broken into and stuff gets stolen nobody is doing anything about it.

Melisa Bay – It is two pieces of property in Newark and Heath. I have no structures on the Newark side and I don't have seven structures, I have two garages and one other container that I do have a permit for from Heath.

Mr. Paul – You have two large garages on there now?

Ms. Bay – I do sir.

Mr. Paul – Are those temporary, are you using any of those for storage?

Ms. Bay – I am using them to store my house and I am trying to down size. Do I know how long they are going to be there? Until I can get rid of stuff, I have sales I am not a hoarder, I am trying to move my house from a big ranch to a cottage.

Mr. Paul – So, are you thinking years, months? Do you have a ballpark?

Ms. Bay – It might be a couple years.

Mr. Layman – We don't like PODS. Just to put it out there for you, we have a problem with PODS and this is a new thing and the City hasn't grasped how it wants to handle them and the board hasn't. Just so you know, we have a problem up front with it.

Ms. Bay – A lot of people are using them.

Mr. Layman – Neither the City nor the Board has figured out how they should be handled. We're doing this ad hoc.

Mr. Claggett – How much property do you have there?

Ms. Bay – 2 acres

Mr. Layman – Philosophically, can you move them over the city line there and put them in Heath?

Ms. Bay – It restricts my access to the back of my property and if I put them in the back I have theft.

Mr. Bay – We are trying to put it where we can still can continue to use the back of the property and like she said, a little over a month ago we had two break ins, two attempted break ins, we actually had to spend two nights there to catch the thief.

Ms. Bay – This is part of my piece of property that I pay taxes on and I'd like to use it. Where I want to put it is back off the road and I do have a permit to put a fence up so no one would even see that from the road. I'm doing a privacy fence, not a chicken fence so nobody will see the container.

Mr. Gayheart – Is there a regulation stating how many structures you can have on a property in Newark?

Mr. Carter – That's why we're here, you can only have two accessory structures.

Mr. Gayheart – I guess the only thing I would ask then, regardless of one parcel, two pieces of property, whatever. There is one address, there are the main building, two large storage buildings, three is a smaller building in the back, all four buildings are full, they have brought in a large shipping container, a medium size shipping container and they are wanting to bring in two more.

Ms. Bay – That's not true.

Mr. Carter – I believe the two they have brought in are the ones they are asking permission for.

Mr. Bay – Has he been in my buildings? Because the building in the back is pretty empty. We had a break in back there and had to clear out the building, everything had been re-boxed two people in black hoodies were preparing to steal everything.

Ms. Bay – The 40 foot is in Heath and has already been permitted, just the two 20's on the Newark side, that's it. The other one is in Heath and is legal so that shouldn't even be on the table.

Mr. Layman – **There has been a motion and a second to give conditional approval for 6 months**

Mr. Carter – I will re-iterate that the application from MS. Bay is for 2 shipping containers.

Mr. Layman – At the end of 6 months, she comes back and either it's renewed or it's revoked.

Motion for conditional approval for 6 months passed 4-1

APPLICATION BZA-22-12,

Applicant: Ryan Badger

Owner: BA Johnson Holdings LLC

Location: 55 Builders Lane

Project: Building Addition

Reference: 125.3.2

Ryan Badger, ADR and Associates, 88 W. Church St. – The request in front of you is from an Environmental Specialist requesting use of aggregate for a parking surface, I lieu

of the code requirement of a dustless surface. There is a building expansion happening on Builders Lane which is kind of an industrial area that has a lot of gravel, the major portion of the gravel parking would be behind or to the west of the current building, it would be used for truck storage and for maneuverability around the expansion to the north of the current building. So, gravel is preferred and really for the type of traffic he's going to have on it, it's easier to maintain, with large trucks making turning movements it tears up asphalt pretty fast.

Motion to approve and a second, motion passed by acclamation

APPLICATION BZA-22-13

Applicant: Nancy Nighland
Owner: Nancy Nighland
Location: 273 N. Heather Dr.
Project: Fence
Reference: 88.1

Steve Nighland – What we have now is a four foot fence, we have a pool in the back yard and what we are proposing is a 6 foot privacy fence so we can have some privacy while we are enjoying our pool. In addition, the height of that fence does not prevent people from coming into our yard. About a year and a half ago I was out of town and I got a text message with a picture of people in our pool. Mr. Claggett I understand your concern with line of sight but that's really not an issue here.

Motion to have the fence as far back off the sidewalk as far as the sidewalk is off the curb, seconded, motion passed by acclamation

APPLICATION BZA-22-14

Applicant: John Griley
Owner: John Griley
Location: 910 Hawthorne Ln.
Project: New Single Family Dwelling
Reference: 16.8

Mr. Layman – I am going to recuse myself from this, since this is in my backyard.

Steve Layman , 915 Hawthorne Ln. – About 7 or 8 years ago, Planning Commission gave our neighbor lot splits, which are in front of you. One is 1.2 acres with about a 20 foot right of way out to Center Dr, the other is maybe $\frac{3}{4}$ of an acre with plenty of frontage on Center Drive. They are wanting to build a house on the 1.2 which is directly behind us, on the other side of our driveway, accessed off of Center Drive .My position would be A- they are good neighbors and we would be in favor of you granting the variance. MY ONLY COMMENT WOULD BE, WHEN Planning Commission created those lots, they intended them to be buildable. Planning Commission clearly created them they are lots of record and I would be in favor of the application.

Motion to approve as submitted, seconded and motion passed by 4-0 with one abstaining

APPLICATION BZA-22-15

Applicant: Ryan Badger
Owner: Hope Timber Properties LLC
Location: 161 Union St.
Project: Office Building
Reference: 66.8

Ryan Badger, ADR and Associates, 88 W. Church St. – This is for a variance on side and rear setbacks for the property owned by Hope Timber. The frontage on Union St. has a very odd property line configuration and with the setbacks from the code is 50 foot side and 100 foot front. Several if not most of the buildings on Union Street are a lot closer than 100 feet, however, we were able to position the new office building to maintain the 100 foot, however, because of the geometry of the property, the property lines made the sides pretty tight to stay within the 50 foot, so we have proposed a 10 foot on the south

side that is up against the parking lot and the north would be 36 instead of 50 off the gas station which there is a lot of space between the structure there.

Citizen – I was just curious if it is going to be next to the gas station or if they had bought property across from the gas station.

Motion to approve, second, motion passed 5-0

THE NEXT SCHEDULED BOARD OF ZONING APPEALS MEETING WILL BE HELD ON THURSDAY, JUNE 23, 2022 5:30 P.M. THE DEADLINE FOR AGENDA ITEM SUBMITTAL IS JUNE 1, 2022, 4:30PM.

5. ADJOURNMENT

Chairman, Board of Zoning Appeals

Secretary, Board of Zoning Appeals