

BOARD OF ZONING APPEALS MEETING  
THURSDAY, FEBRUARY 23, 2023 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 February 23, 2023 Board of Zoning Appeals Meeting to order.**

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

**2. APPROVAL OF MINUTES**

Minutes of the January 26, 2023 meeting

**Motion and second to approve minutes of January 26, 2023, motion passed by acclamation**

**3. OLD BUSINESS**

**4. NEW BUSINESS**

**APPLICATION BZA-23-02**

Applicant: Northpoint Ohio Architecture

Owner: MIMG XXIII

Location: 95 S Westmoor Ave

Project: Picnic Shelters

Reference: 26.5

**Phil Claggett, 19 N. 4<sup>th</sup> Street, Newark, Oh** - Asking for a variance for McMillen Woods swimming pool to erect two 20x20 open shelters, current requirement is 100 feet for accessory structures and we're asking for a reduction of 50 feet for one and the other 62 feet.

**Larry Crothers, 54 Stonington Circle** - Since this is pretty much going to be in my front yard, just concerned about anything formulated as reduced and so forth. I see no problem with where they are, I was misinformed as to which side of the existing pool they were going to be.

**Motion to approve, second, motion passed 4-0 with one abstention**

### APPLICATION BZA-23-03

Applicant: Josetta Whitney

Owner: Kevin & Josetta Whitney

Location: 880 W. Main St.

Project: Fence

Reference: 88.1

**Mr. Carter** - The City Engineer Department has an item here to give to the board on behalf of this property, if the applicant would like to come up and see it as well. This is a traffic cone angle designed by the City of Newark Traffic Engineer to demonstrate the line of sight that should be for cars turning off of 25<sup>th</sup> Street onto Main Street and his recommendation as the traffic engineer for the city of Newark is nothing should be in that cone. Then the 25 foot point intersection of 25<sup>th</sup> Street and West Main Street should be observed as well as far as traffic safety visibility issues. That is from our traffic engineer for the city of Newark.

**Josetta Whitney, 880 W. Main St.** - Is that 25 point included in that square?

**Mr. Carter** - No, not really included. I know I discussed that with you on the phone a little bit how you measure that. It's kind of hard to go out on site and show you exactly where that is.

**Ms. Whitney** - So, we want to request a variance from a 4 foot fence to a 5 foot fence on West Main Street and then the side of our house is 25<sup>th</sup> and according to the regulations you can only have a 4 foot fence. Our back yard that we can put a 5 foot fence has a very large patio and a driveway, so we don't have a lot of grass area back there for our German Shepherd which is our main concern. The German Shepherd can jump a 4 foot fence, so we're requesting a 5 foot fence and I did include pictures of the fence.

**Kim Draves, 857 W. Main St.** - I hate to say this, but I oppose this. I don't have a problem with a 5 foot fence going from the front end of the house going towards the back, but being in the front at that corner, West Main, as you all know especially now, it is so hard to even drive down that street turning right or left off of North 25<sup>th</sup> Street and not being able to see with the obstruction of that fence I hate to think how many accidents there will be there. Just sitting here thinking, I understand about a dog, but I don't know of any homes on West Main Street that have a front yard fence. To alleviate the problem of the driveway, put in a gate. I don't mind a 5 foot fence up to the front end of your house, you do have a fence on the other side between you and the neighbor. I don't know if that is 4 foot or 5 foot that goes to your porch, that sitting area there, but putting a front fence, number one the obstruction for traffic and then just the way it would look, I'm opposed.

**Citizen** - There is a property down further West main that has bushes all up along the edge, but a metal fence that has 80% visibility.

**Ms. Whitney** - I understand that the code doesn't use the word visibility here in Newark, but in Columbus we had a corner lot and we had to put an 80% visibility fence up to allow traffic when they went around that corner to see and this is pretty much the same fence, which is why I showed the fence of our previous

property. I think between the 25 whatever calculation that you do plus that little box, would take care of the issues of being to see around the fence or even through the fence.

**Citizen** - Just a suggestion, can the fence be pushed back a little bit so it's not obstructing?

**Ms. Whitney** - That's what that little square up there is showing, that it would be moved back just a little bit, which I think would be fine.

**Mona Fine, 1098 Sunrise Drive** - (Inaudible)

**Mr. Claggett** - TO me this fence is very transparent. I guess I'm asking, because you've got a corner lot, are you okay with the setback of the fence off of 25<sup>th</sup>?

**Ms. Whitney** - According to the square I saw, it doesn't look like you're asking for it to go back very far and it's just on that one corner.

**Mr. Claggett** - With this dimension you're going to have greenspace between 25<sup>th</sup> and your fence.

**Ms. Whitney** - That doesn't belong to me.

**Mr. Claggett** - Okay, but I'm asking the question, would you be okay with this dimension setback to the sidewalk here, just because you've got a dog in the fence and people along the sidewalk, just to keep a buffer. It would also set the fence back that much more to allow for visibility even though it's not a solid fence.

**Ms. Whitney** - Seven to ten feet? Can we do seven?

**Mr. Claggett** - We're proposing the 5 foot because it exceeds the 4 foot, but we're going to set it back 7 feet to match the same reveal from 25<sup>th</sup> and West Main.

**Ms. Whitney** - Because there would be no purpose for me to spend that much money on a fence, not to be able to enjoy a great portion of my front yard. The address is West Main, I do have a side door to 25<sup>th</sup>, but the official address is West Main.

**Mr. Carter** - I'm going to try to provide them with a depth that your house is offset from the property line. It looks like 74-75 feet, and the distance Mr. Claggett here was referencing on the green space between the property line and N. 25<sup>th</sup> Street is approximately 12 feet.

**Motion that it's kept with the same reveal from 25<sup>th</sup> and West Main of 12 feet back, second, Motion passed 3-2, Variance granted, 5 foot fence, subject to 12 foot off the property line on West Main and on the property line on 25<sup>th</sup>, with the fence as submitted**

#### [APPLICATION BZA-23-04](#)

Applicant: Eric Sharp

Owner: April & Eric Sharp

Location: 209 N. 21<sup>st</sup> St.

Project: Accessory Structure

Reference: 16.7

**Eric Sharp, 209 N. 21<sup>st</sup> St.** - Looking for a variance to erect a building 27 feet tall on the northwest corner of my property. Which would be back near Marcos Pizza and Wilson School. Looking for this height to match the esthetics of our existing home which is a 1930's tudor house. I don't see any issues with views from any of the adjacent neighbors.

**Cynthia and Dale Crane, 190 N. 21<sup>st</sup> St.** - We would be across from Eric and we're not opposed to his structure at all.

**Nancy LeBlanc, 176 N. 21<sup>st</sup> Street** - We're not opposed either, we just wanted to know what was going on.

**Motion to approve, second, motion passed 5-0, Variance granted**

#### APPLICATION BZA-23-05

Applicant: Northstar Towers

Owner: The Kroger Co.

Location: 1155 N. 21<sup>st</sup> St.

Project: Transmission Tower

Reference: 88.2/50.4

**Jesse Stiles, 815 Superior Ave., Ste. 1425 Cleveland, Oh., 44114** - I represent Northstar Towers, we are here on exciting project to improve wireless services in the city of Newark for the residents and businesses in and around this location. The initial tenant on this project will be Verizon, but the location will be available for all wireless companies to potentially locate their equipment on. We got here because Verizon identified a significant gap in its network coverage and capacity. We looked initially for existing locations to place antennas on whenever we try to resolve these existing gaps. There were no existing structures within the search area issued by Verizon, so we then started to look for locations that would meet the ordinance to erect a new structure. To that end, we worked for a very long time, it took about 3 years to get a lease with Kroger. To put it diplomatically, they are process intensive. So, we worked a very long time to find a location on their property and to get a lease through them. We have that. We're actually very pleased with the location in the rear corner of the property, it is distant from the main public right of way, it is distant from single family residential. We feel it meets the spirit of the code as well as the literal requirements of the ordinance itself. We're not here asking for any code relief, of course we're coming to you for the fence of the tower but we're not asking for any relief from the ordinance itself. Briefly, I'll go through a couple features of the project. We feel it's very architecturally compatible with the existing business district zoning on the property. It would be an unlit, we are putting a wood board on board fence around the ground equipment to help conceal it and make it more esthetically consistent with the development in the area. All utilities will be underground. With that I would open up for questions and I'd like to take a moment to thank staff for all of their work with us in questions and getting us to this point, we appreciate the time that was spent.

**Myrtle Frazier, 1112 Pierson Dr.** - I noticed in the letter that we got, there was no indication to why they want to put up this tower or where they were going to put up this tower. Anyway, based on what I got from this letter, I oppose it. I think a tower of any sort would lower the value of my property and everybody else's property, but it would money into the hands of Kroger. I object to it because I do not see as it would make any improvements in the community.

**Mona Fine, 1098 Sunrise Dr.** - I don't know why Kroger needs the lease money from this thing, but my house is immediately behind where this is going, there are young children moving into this neighborhood, the research is too new to figure out whether these things can cause leukemia, cancer, I've already had cancer and am susceptible to getting it again. There are young people on my block, there are apartments, those people have no say in this and if anybody comes out with a disease because the technology is too young to test, I don't understand why Kroger can't put it on the other side.

**Mr. Layman** - Wait a minute, let's not throw Kroger under the bus. This is Verizon wanting to have a tower, they selected this as a spot that works for them. It has nothing to do with Kroger.

**Citizen** - When you look at how much farmland and theoretically, if you had to put it in there, if you go north of Kroger on Baker Blvd. and the way the road curves, you could probably put it in there and be a lot further away from the residential. It would be one thing if the tower was already up and people built a house, but no, this is a residential neighborhood, not to mention the apartments and the nursing home it would be right in front of it. Why should I take any depreciation on the value of my property when Kroger is making money.

**Ms. Fine** - It's Kroger is making a lot of money off this, he's from Cincinnati or Cleveland, he's not affected by this, I understand he's been through a lot of work, but George is familiar with my property, he was out there, George this is literally directly behind my house and every other house on my block where young families are moving in. I just don't understand why it has to be so close to homes when it could be at the other end of Kroger, towards Baker where there's a whole bunch of woods, where the only people that are living there are homeless and hopefully they're building a place for them to live behind Walmart, so why does this have to be in a residential area in my backyard, which I purchased because there's woods behind my backyard. If it was there before maybe that would've been my choice, but it's dangerous, we don't know.

**Citizen** - I agree with her about the radiation and the other affects with the 5g.

**Mr. Layman** - Don't forget madam we need cell towers.

**Citizen** - I agree with her it should be someplace else.

**Mr. Stiles** - May I have the opportunity to respond to some of the points that were raised? First, I'd like to respectfully provide the board, which I'm sure you're aware from your legal counsel, health effects are explicitly prohibited from being a consideration for any zoning boards deliberations. I can tell you anecdotally on the record BZA is a quasi traditional hearing, you didn't swear us in, it is a quasi traditional hearing, I can tell you that I lived for 13 years in my last

house next to a cell tower that was probably 400 feet from the house, so yes, I have lived next to cell towers. Lastly, a project like this is meant to improve the public safety, economic development and connectivity for residents. Verizon doesn't build these just to be difficult or to put something they think is deterring to the neighborhood there. They do it because 80% of wireless traffic, data and voice now comes from indoors and the vast majority of that from within residential dwellings. Cell phones aren't about you get a flat tire on Route 40 you need to call someone for a tow, it's about how do I connect with my grandkids, how do I connect with my spouse, how do I do my work, when my work says I can't come to work, I've got to do it from home. So, these are an essential public service, very essential. Now, the map the audience had mentioned a few things about spacing, if you look at the circle map I gave you, if you look to the north there are two towers to the northeast outside the one mile radius. You will see a tower to the west, just outside of the circle. What was noted to the board from the audience was why was there a need to be in this location when there was other potential locations to look at. If you look, this project location is almost exactly equidistant from existing sites outside the one mile radius. Verizon is on the tower due west, they built it about 5 years ago, don't know the exact year, but it's approximately that old. So you can see with the transition from 3 to 4 to 5g cell sites cover a significantly smaller footprint than they did in the previous generation. Why is that. Two big drivers, one, usage, cellphones are completely ubiquitous now, they're not a luxury item for a guy at the country club on a golf course at 2 in the afternoon. This is now something everybody has, even children have them in many cases. The other driver is the change, I'm not going to get too nerdy on you, but it is relevant for this conversation for the board to understand. The frequencies have changed from 1 generation, 1g, all the way to 5<sup>th</sup> generation, 5g. You're talking original networks that were built in the 600mhz range are now operating north of 2200mhz, so a site that used to cover 5 square miles now might cover 1 square mile. This type of density you're seeing from the Kroger location to the site due west is very consistent across the country with the cell companies, not just Verizon, all of them. We work for all of them, this just happens to be for Verizon. They all have the exact same needs and it's driven by everybody in this room. The folks on that side and this side, we are using it. I guarantee you every single person has a phone in their pocket in this room. Every household has one, I would go that far.

**MS. Fine** - I don't understand why it can't be on the other side on the north end of Kroger where there are no houses, where there are woods that are very thick and nobody has to look at the thing and nobody is close enough to be affected by it because I'll tell you what 10 years from now if anybody gets leukemia or gets sick, they said the same thing about the tobacco industry, about the talcum powder, about weed killer, that it's perfectly harmless. Why does it have to be here where there are residents all around that area? George will tell you this is probably 100 feet from my house, if that much.

**Citizen** - There's no reason for it to be that close to a residential area.

**Mr. Layman** - I'm going to stop you now, before you guys go any farther, you've said your peace. They asked a specific question, is there a reason why you can't put it on the other side?

**Mr. Stiles** - Because Kroger's development plans and the future site plan that Kroger has. Also we are trying to keep it close to the people we are trying to service, so it's a balancing act, right. You try to keep the sites where esthetically it might make the best sense.

**Mr. Layman** - If you were to go north of the extension to Baker Blvd. Can you people just not talk for a while, I know it's hard. It's not funny. Baker Blvd. okay, if you go on the north side of that, you're in the woods, you're not near anything and the landowner is the Newark Area Soccer Association who would probably dearly love to have the lease income of a cell tower. Have you explored that?

**Mr. Stiles** - Sir, our original design objective from Verizon was significantly to the southeast, so going to the Kroger property was already a compromise for their engineering team, they did not prefer to be this far north, so they are already beyond the original search area. I'd be happy to supply that to staff as a matter of record. I don't have it with me now to give you, but I could do that. I didn't know we were going to pull out the pencil and try to find other property locations, it's a little unusual. May I ask how many letters were sent out, how many residents were notified of our application?

**Mr. Layman** - Everybody within 200 feet.

**Mr. Stiles** - I would like the record to reflect how many notices were sent out, respectfully.

**Mr. Carter** - Twenty two.

**Mr. Stiles** - So, I would like the record to reflect that 22 notices were mailed out for this project, and I believe and three households out of 22 are expressing a disagreement with this project, I would like to respectfully submit that 19 other households are showing their consent by not being here in opposition.

**Mr. Layman** - You don't have 3 votes on your application, if you go 1200 feet north, you'll have 5 votes.

**Mr. Stiles** - I cannot go off the Kroger property and start the whole process over. Would you support a location on the Kroger property in a different spot? The northwest corner of the corporate property. There is really significant due diligence already done. I'll be completely frank with you, I don't even know that Kroger is open to that. I don't know whether Kroger will accept that location all I can do is ask and potentially endure another 3 years of working with them to get the location changed.

**Mr. Layman** - If you can go to the northwest corner of Kroger, you can go another 30 feet and have a wooded area.

**Mr. Stiles** - Starting over with the property owner is not tenable. I would like to respectfully request that this matter be tabled, not denied, so that I hold my place in time and right and we can address it further with staff in the meantime and potentially come back with a revised site plan, not an entirely new request.

**Motion to table at the applicants request, second. Motion passed**

**Mr. Layman** - If he comes back next month and brings it off the table there will not be notice.

**Mr. Carter** - I'll elaborate on what Chairman Layman said on that. AS zoning code requirements go, we send out original notification to property owners within 200 feet of the property. When a project is tabled or an applicant is tables, they may decide within the next two months to come back and bring that off the table for discussion. The zoning department does not send out a re-notification of that meeting, however, our agendas are public record and will be on our website and Mona, you have my phone number, you may call me. At the same time all of you guys comments are a public record, they are recorded in the minutes and they have been heard by the floor.

**Citizen** - How much property does Kroger own?

**Mr. Stiles** - 12.25 acres.

**Mr. Layman** - The property goes back to the west as far as the Log Pond Run. Then Log Pond Run kind of curves around and they come pretty close or to the run on the south side and then the east side is 21<sup>st</sup> Street.

**Ms. Fine** - I really appreciate you guys listening.

**Mr. Carter** - I am requesting an interpretation of the zoning map specifically parcel number 0542077942-00.00, I'll pass this around. This parcel is off of South 2<sup>nd</sup> Street almost at the city limits. This is Daugherty Circle. This is all one parcel now from here to here and I found a blank spot on my zoning code map, it's not zoned. I went back to 2021. The rest of the property is zoned Residential Low Density Single Family, I'm assuming there is some kind of GIS clerical error at some point in time, but the board does have the power to make a map interpretation.

**Mr. Layman** - What we're talking about is there is a piece of property that is un-zoned and it's off of South 2<sup>nd</sup> Street.

**Motion to zone the un-zoned area RL - Low Density, second, motion passed**

**THE NEXT SCHEDULED BOARD OF ZONING APPEALS MEETING WILL BE HELD ON THURSDAY, MARCH 23, 2023 5:30 P.M. THE DEADLINE FOR AGENDA ITEM SUBMITTAL IS MARCH 1, 2023, 4:30PM.**

## **5. ADJOURNMENT**

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Chairman, Board of Zoning Appeals



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Secretary, Board of Zoning Appeals