

Board of Zoning Appeals
June 21st, 2018
Minutes

The Chairman called the meeting to order at 4:30PM. The following members were present: Dr. William Semans, Mr. Dan Delahunt, Mr. Kevin Zeiher, Chairman John Feick and Mr. Walter Matthews. Ms. Angie Byington represented the Planning Department; Mr. Trevor Hayberger represented the Law Department and Casey Sparks, Clerk from the Community Development.

The Chairman swore in staff and audience members that wished to speak on any agenda items.

Mr. Delahunt moved to approve the minutes from the May 17th, 2018 meeting as written. Mr. Matthews seconded the motion. The motion carried with a unanimous vote.

Ms. Byington presented that Chris Andrews has submitted an application for variance to the maximum permitted fence height at **1801 George Street**. The maximum permitted height of the fence is 6' the applicant is requesting an 8' fence. The zoning of the property is GM General Manufacturing, the surrounding properties are also zoned as manufacturing, agricultural, and light manufacturing uses. The applicant is requesting a decorative fence that is taller for security purposes. Planning staff is recommending denial of the variance due to the fact that the fence is along a right of way and would set a precedent.

Ms. Byington read a letter dated 6/21/2018 into the minutes from Joanne Braun in support of the proposed variance.

Mr. Feick stated confirmed that the proposed fence that they are discussing this evening is the fence within the front yard, not within the rear of the property.

Chris Andrews, 806 Marshall Ave, stated that a 6' fence is at eye level, he would like to avoid people jumping over the fence, and the proposed fence will be costly. He would like to continue to develop the south side of the property and enclose this area, the fence is only for the front of the property. Mr. Andrews stated in response to Mrs. Braun's letter, the property has been surveyed and currently does have had flooding issues with Mrs. Braun's property that they are currently working through. The proposed fence will be aesthetically pleasing and help with security.

Mr. Feick stated that the property is not at the same elevation of the street.

Mr. Delahunt ask planning staff if they are denying the application because it is within the right-of way or because it is above 6'.

Ms. Byington stated staff is recommending denial as staff is unaware of any previous approval of an 8' fence, staff recognizes that the fence is within a manufacturing district and is decorative.

Mr. Feick ask if the 6' fence is constructed could he place barbed wire on the top.

Ms. Byington stated that he would not be permitted to do that. Staff appreciates the proposed decorative fencing, and the board may want to consider the topography in their decision.

Mr. Zeiher ask staff why the height of a fence may be different within the manufacturing district.

Ms. Byington stated that the nature of the district would be feasible for a different height of fence, there would not be homes within the area or generally residential around the property.

Mr. Andrews stated that his property is lower than the street.

Mr. Feick stated that because the property sits lower than the street the 8' fence would appear to be 6' due to the topography of the property.

Mr. Delahunt stated that the property owner is proposing an investment into the property, the property sits lower than the street, and the proposed fence will be visually pleasing as such made a motion for approval.

Mr. Zeiher seconded the motion and stated that due to the fact that the fence is proposed within a manufacturing district, the topography of the property, and the style of the property.

Mr. Delahunt stated that he would also like to condition the motion that Mr. Andrews complies with the issues addressed in Mrs. Bruan's letter, assuring that the fence is not located on her property. The motion was passed with a unanimous vote.

Ms. Byington presented that Donald Frost III has submitted an application for a variance to construct an accessory structure to be used for the storage of recreational vehicles. The applicant has applied for a 9' variance to allow for the construction of a 24' tall accessory structure at **519 Bardshar Road**. The code would only permit a maximum height of 15'. The applicant is surrounded by other residential uses and is located within the rear yard. The proposed building meets all required setbacks, the applicant has also communicated that he proposed to construct a drive to the proposed accessory structure. Planning Staff recommend approval of the 9' variance with the following conditions:

1. All appropriate building and zoning permits shall be obtained
2. All federal and state laws shall be observed
3. The driveway be constructed with garage

Staff believes that allowing for this variance would allow him to provide a structure for the recreational vehicles that are being parked in the yard.

Ron Scheufler, 503 Bardshar Road, stated that he is in favor of the proposed variance

Donald Frost, 519 Bardshar Road, stated that he has a letter of support from his neighbor on the south of him from Robert and Brit Hageman.

Ms. Byington read letter into the record.

Mr. Feick ask if the vehicles currently on site would be the only vehicles he plans on storing on the property.

Mr. Frost stated that the existing vehicles on site are what will be stored within the structure and stated he is requesting additional height to accommodate his current vehicles.

Mr. Feick confirmed that the applicant will only be utilizing the facility for storage not for repairs.

Mr. Frost stated that he had lost his previous storage facility as such he is looking to construct a building for storage purposes only.

Ms. Byington stated that the driveway will need to be constructed with the garage.

Dr. Semans moved to approve the variance request with Staff's conditions; Mr. Matthews seconded the motion. The motion was approved unanimously.

Ms. Byington presented that Jeff Schmid, on behalf of Jim Preston, has submitted an application for two variances; a 1' variance for a fence within the front yard and a 2' variance for fence within the side yard at **1621 Columbus Ave**.

The applicant has proposed to construct a 4' fence within a small portion of the front yard and a 6' fence within the side yard of the property. The application indicates that the adjacent property has an elevated sidewalk that is elevated about 8", the variance will help bring the fence to a height that will increase the privacy of the applicant. The proposed fencing is either decorative or of a vinyl construction. Staff recommends approval of the 1' variance to the front yard and the 2' variance to the side yard to allow for the construction of 3', 4', and 6' high fence along the north side of 1621 Columbus Ave with the following conditions:

1. All appropriate building and zoning permits shall be obtained.
2. The fence shall be located on the owner's property and shall not block any access easements from the adjacent property.
3. All federal and state laws shall be observed.

Jim Preston, 1621 Columbus Ave, stated that he has had a good relationship with his neighbors, however his driveway has become a parking lot. The current owner is fabulous to work with, however for resale value there needs to be an improved separation. The propose increase for the fence on the side of the property is only for distance of 5' and is needed to create a barrier from the back of the adjacent building, the added height is because of the sidewalk that is elevated.

Mr. Feick ask the applicant if he was aware of the location of the property line on the side.

Mr. Preston confirmed the location of the property line and stated he will be constructing a new concrete drive.

Mr. Semans asked the applicant if they would be maintaining space between the sidewalk and the fence.

Mr. Preston stated that the driveway will be raised but he plans on maintain this area and any cleaning that needs to be done.

Mr. Zeiher moved to approve the variances; Dr. Semans seconded the motion. The motion was approved unanimously.

Ms. Byington presented that David Makkos has submitted an application for a use variance to allow for a transient rental use at the property located at **1119 4th Street**. The property is zoned as R1-40 Single Family Residential. Transient rental is currently not allowed in any residential districts. The applicant has received written support from many residents. The applicant has stated that he has invested \$7,000- \$8,000 to furnish the home and make it more suitable for transient rental. Staff does have concerns with granting the use variance as the property is not located near or adjacent to a proposed transient rental overlay district, or adjacent to an existing area that permits transient rental. Planning Staff is recommending denial of the use variance. Ms. Byington stated that if the Board chooses to approve the use variance staff would recommend approval with the following conditions:

1. All appropriate building and zoning permits shall be obtained.
2. All federal and state laws shall be observed.
3. The applicant files for a transient rental permit and all rules and regulations are strictly adhered to with the zoning and housing code.

Mr. Makkos, **1113 4th Street**, stated that he lives in the property next door to the property in question. Mr. Makkos stated that he purchased the property to increase property values within the area. Mr. Makkos stated that most of the guests that he has had have been families. Mr. Makkos stated that he has invested several thousands of dollars into the property. The applicant stated that he had a signed petition from his neighbors for approval. Mr. Makkos stated that he felt like he covered all the basis he when he was trying to find the approval process for renting the property and was surprised when he received the violation. He indicated to the Board that he is always in contact with all of the renters, giving them the rules and regulations. If not approved it would be a large financial setback as he has placed a substantial investment in the property. The intention is to rent the property out for a year or two then move into the property at 1119 4th Street and rent his current home on a yearly basis. Mr. Makkos described to the Board all of the work that he is doing within the neighborhood to maintain the area. His guests have indicated that they like that the rental is within a quiet neighborhood.

Sharon Johnson, 1139 Fifth Street, stated that she was surprised to see this, she believed these types of uses were going to stay within the area of Cove Street. Ms. Johnson stated that this would result in an increase in transient rentals and she does not approve of spot zoning. She expressed her concerns regarding potential renter's activities and how the landlord will take care of maintenance issues such as trash and mowing of the grass.

Mr. Makkos stated that he would be keeping up the maintenance of the property. He purchased the property to help save the neighborhood and will not tolerate unruly tenants. He would like to eventually move into the property so he will not allow a disruptive atmosphere. The property will be a rental no matter what, either transient rental or a yearly rental. The property will have a large driveway that the tenants can park in.

Mr. Feick stated that the Board reviews each individual application, just because one property is granted a variance it does not mean variance would be approved in another location.

Mrs. Johnson stated that she understands this may be the exception to the norm, however she is concerned about absentee landlords, spot zoning, and discrimination.

Mr. Delahunt stated that this is becoming a large issue nationally and discussed the recent approval of the transient overlay district within the cove area. Mr. Delahunt asked the applicant if he was aware they could not transient rent within this area.

Mr. Makkos stated that he reviewed the website but did not locate any procedures or policies regarding the issue, he stated that he should have called the city. If he knew this was not permitted he would not have moved forward with renting the home.

Mr. Delahunt stated that he does not want to go against what the recent work and established policy of the city and the recent established transient rental overlay district.

Mr. Makkos stated that there is a current demand for this type of housing within the area, and he believes that they should take this on a case by case basis. He would understand if the landlord lived away it could be an issue, however he lives next door. The City operates on a "three strikes and you're out system", as such this would assist on any nuisance violations. He recognizes that this would not be appropriate within every area of the City, however he believes there is a need for this type of housing within this area for tourist. His neighborhood is in supportive of this use and he would not do anything to harm the existing neighborhood.

Dr. Semans ask staff if there were any plans for additional overlay districts.

Ms. Byington stated that there is nothing proposed at this time, however residents have mentioned a district close to this area but not this exact area. Ms. Byington explained the approval process for an overlay district.

Mr. Zeiher stated that they couldn't ask for a better situation for this type of use, however the Board cannot go against what the city has done regarding this issue. Mr. Zeiher stated that if the applicant's neighborhood is interested in doing this they should work together to create an overlay district.

Mr. Delahunt made a motion to deny the application for a use variance and highly recommend that Mr. Makkos work with neighbors to create an overlay district; Mr. Zeiher seconded the motion.

Mr. Semans asked if there is any possibility for a temporary variance be permitted while the applicant begins the process of an overlay district.

Ms. Byington stated that she had brought this up to the law department, it could a consideration understanding that the applicant wants to eventually utilize this as his permanent residence.

Mr. Hayberger stated that they would need to determine a timeframe.

Dr. Semans stated that he would suggest a six month timeframe to coordinate with the Cedar Point season.

Mr. Delahunt moved to withdraw his previous motion. The existing motion was withdrawn.

Dr. Delahunt motioned to approve the use variance for six months to allow renting of the property for the summer, this would also allow time to create an overlay district with the city. Mr. Zeiher seconded the motion and included conditions provided by staff; which carried with unanimous vote.

Ms. Byington presented that Geoff Aiken, on behalf of Cedar Point Park LLC has submitted an application for a variance to the maximum allowed height. The current zoning on the property is "CR" Commercial Recreation. The applicant is proposing to construct a multi- use indoor sports facility. The 10' variance to allow construction of a 50' building whereas the zoning code permits a maximum height of 40'. The applicant has indicated that the extra height is necessary for the use of the building as a world class athletic experience. Staff would recommend approval with the following conditions.

1. All building and zoning permits are to be obtained
2. All federal and state laws are to be observed.

Geoff Aiken, 1100 Superior Avenue, stated that the level of play that will occur at this facility requires a higher clear height, the minimum height the operator needs is to be 30' with the depth of the structure and the slope of the roof needed to get the water off, the building needs to be 50'.

Mr. Semans stated that understanding the current parking issues at the outdoor facility does the applicant believe that this site has enough proposed parking.

Ms. Byington stated that the site plan will be presented to Planning Commission for their review at the next meeting. The parking plan does meet current code requirements, staff is working with the applicant to address these issues.

Mr. Zeiher asked about the ingress and egress issue with the proposed traffic flow.

Ms. Byington stated that ODOT is reviewing the plans and Planning Commission will also review this at their next meeting.

Mr. Zeiher made a motion to approve the variance; Mr. Matthews seconded the motion, the motion carried unanimously.

Ms. Byington presented that Tim Ali has filed an application for a variance to place an accessory building within the front yard for **811 Cedar Point Road**. The code only permits accessory buildings within the side and rear yard. The applicant had previously requested a 720 square foot accessory building, the applicant has revised the application to construct a 540 square foot accessory building. The applicant has proposed the height to be under 15' as required by section 1129.13. The revised structure is of similar size of the other enclosed structures that have been proposed, and built, on the north side of the road. Planning Staff recommend approval with the following conditions:

1. The height of the building shall meet all current zoning regulations.
2. The applicant shall provide a minimum of 3' setback of the accessory building from the property line.
3. The applicant shall apply for all building and zoning permits
4. Assure that all deed and HOA requirements are met.
5. The applicant speaks to Cedar Point representatives about future road project
6. If the road is widened, the applicant should move the structure as to not encroach within the private road right of way.
7. The structure shall not be utilized as a dwelling.

Mr. Zeiher moved to take the application off the table, Mr. Matthews seconded the motion.

Mr. Ali, 811 Cedar Point Road, stated that they removed some of the storage area from the previous submittal and reduced the size of the structure by 25%. Mr. Ali stated that they will not build the structure into the Cedar Point easement on his property. The proposed structure will be 3' from the property line and almost 25' from each adjacent property owners.

Mr. Feick ask if the mean height of the structure was measured from the average grade at the front of the structure. Mr. Feick ask if the proposed building is on a separate parcel.

Ms. Byington stated on the deed they may be considered on the same parcel.

Mr. Feick ask what the required front yard setback would be for this parcel.

Ms. Byington stated that this is an accessory structure and there is currently nothing in the code that addresses setbacks for accessory structures within the front yard, as such the structure would be required to meet the setbacks set forth in the code for accessory structures.

Mr. Feick stated that Cedar Point will utilize all 50' of right-of-way, the accessory structure will then be 3' off this right of way.

Ms. Byington stated that the applicant is aware of Cedar Point's plans for the street, however the applicant has indicated that he will be outside of the easement.

Mr. Ali stated that he is proposing the structure to be 25' away from adjacent property owners and he is aware the Cedar Point easement and it will not be located within this easement.

Mr. Brady stated that the applicant has indicated that the structure will be more than 25' from the center line of the road and located outside of the right-of-way.

Mr. Delahunt ask the applicant if he had spoken to ONDR regarding the location of the proposed structure.

Mr. Ali stated that currently he has not surveyed the property, he wanted to receive approval through the Board before moving forward with the construction process.

Mr. Semans moved to approve the application subject to staff's conditions; Mr. Matthews seconded the motion, and the motion was carried with a 4 to 1 vote, with Mr. Feick voting no.

Mr. Brady thanked the Board for their service thanking them for supporting staff and having empathy on residents.

Mr. Zeiher moved to adjourn the meeting. Mr. Delahunt seconded the motion. The meeting was adjourned at 5:50PM.

APPROVED:



A handwritten signature in blue ink, reading "Casey Sparks", written over a horizontal line.

Casey Sparks, Clerk



A handwritten signature in blue ink, reading "John Feick", written over a horizontal line. A large, loopy circular flourish is present to the left of the signature.

John Feick, Chairman