

MINUTES

CITY OF WOOSTER BOARD OF BUILDING & ZONING APPEALS

June 6, 2024

I. MEETING CALLED TO ORDER AND ROLL CALL

Stewart Fitz Gibbon, Chairman of the Board of Building and Zoning Appeals, called the meeting to order. Board members Jason Anderson, Jeff Battig, Martha Bollinger, Stewart Fitz Gibbon, Mark Reynolds, and Jennifer Shatzer were present. Board member Ben Gunn was absent. Vincent Marion, Planning and Zoning Manager, represented the City of Wooster.

II. APPROVAL OF MINUTES

Jason Anderson motioned to approve the minutes of the May 2, 2024, meeting of the Board of Building and Zoning Appeals. Jeff Battig seconded the motion. The motion carried unanimously 6-0.

III. APPLICATIONS

BZA-24-8.

Morgan Stephenson requested an Area Variance from Planning and Zoning Code Section 1113.01(e)8G to allow a fence within the required front setback that exceeds the permitted height and is not fifty percent open at 1745 Hila Way (parcel number 67-00458.000) in a R-1 (Suburban Single Family) zoning district.

Morgan Stephenson, 1745 Hila Way, stated that I built the fence for a service dog and has PTSD issues. Ms. Stephenson explained that the police and the city had been called due to the dog's loud barking and installed a fence to prevent them from barking. Ms. Stephenson continued by requesting to keep the fence to keep the dog and herself safe and comfortable. Ms. Stephenson stated that other fences in the city were in the front yard, for example, on Burbank Road. Ms. Stephenson noted that she owned four dogs in the fenced-in area. Ms. Stephenson explained that she was a nurse and wanted to live within the working range and respond rapidly.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application.

William Gantz, 1731 Hila Way, stated that he and his wife Karen have lived on Hila Way for 39 years, and last year, Morgan purchased the house next door. Mr. Gantz explained that in February, they started building the fence and completed it in two to three days, and after a short review, the fence still needed to meet the zoning code. Mr. Gantz continued that he filed the complaint with the City about the fence and has never filed any other complaints against the neighbor, even though she has accused us of that. Mr. Gantz stated that we understand that our neighbor has a right to have a fence and also respect that the lot has the majority of the yard on the street side, which was unique. Mr. Gantz noted that the fence was very visible for everyone and felt that she should have gone through zoning as the

code states before building the fence; it does not strengthen the fence code that the zoning is trying to enforce if everyone is going out, and building a fence and then come in and get a variance for an as-built fence. Mr. Gantz explained that if the fence must be amended, that is the board's decision and reminded everyone that it is a wood fence, which is economical to fix and amend.

Gary Gantz, 1761 Hila Way, stated that he supported the fence and had no problems with it. He lives directly across the street from the applicant. Mr. Gantz explained that he has to pull out around the fence to exit my driveway daily and has no problem seeing up or down the driveway to see if any cars are coming.

David Everett, 1762 Hila Way, stated that he had no objections to the fence and came to support the applicant.

Dawn Streit, 1723 Hila Way, stated that our neighborhood is beautiful, that we lived there for 27 years, and that we have dogs. Ms. Streit explained she understands the fence and the dogs; however, when you remove the neighborhood's beauty with a wood fence and don't know what it will look like in two years, she feels like living in a fort. Ms. Streit continued that if the fence had been a chain link fence and you could see through it, I wouldn't mind, but she could not look down the street because of the 6-foot wooden fence. Ms. Streit stated that she finds it irritating that our little street turned into a fort.

Kimberly Gantz, 1761 Hila Way, stated that she lives directly across the street and that we have no problems with the fence. Ms. Gantz noted that they had lived there for 38 years and have had a wooden fence around our inground swimming pool for many years; no one has complained about the look of our fence, and they have not made the neighborhood look bad or blocked anyone's view. Ms. Gantz explained that she has three dogs, which was the reason for her fence. She wanted the dogs and the neighborhood to be safe. Ms. Gantz continued that the applicant intends to install lights on the fence posts and landscaping. Ms. Gantz stated that there was no other option for the fence.

Karen Gantz, 1731 Hila Way, stated that she lived beside the fence and ran along most of my driveway. Ms. Gantz explained that she likes to sit outside on the front porch in the evenings to watch what is happening in the neighborhood and cannot see anything on half of the street. Ms. Gantz continued that the fence disrupts the whole neighborhood and not the same feel. Ms. Gantz stated that a wall should follow the guidelines of 50 percent visible and on the street sides 4 feet high.

Devin Malcolm, 1745 Hila Way, stated that he built the fence and that Morgan's transition back home from the Navy was not easy. Mr. Malcolm explained that buying her own home was her only chance to feel safe and have comfort being back home, but that hasn't been the case. Mr. Malcolm continued that people who aren't from this neighborhood or in this room with us today came to our house without reason to do so, and we believe they had terrible intentions. Mr. Malcolm stated that they had installed security cameras and felt that adding the fence would give us a place for our dogs, add a layer of security, and allow us to

enjoy our dogs without a leash. Mr. Malcolm noted that the Ohio Revised Code 955.22 stated that dogs in protection should be kept physically confined or restrained upon the owner's premises or keeper or harbor by a leash, tether, or adequate fence. Mr. Malcolm explained that with a wall of fewer than 6 feet, the dogs can jump out, which has happened. Mr. Malcolm stated that dogs in the neighborhood were aggressive and not leashed.

Brandon Stephenson, 9072 Overton Road, Burbank, asked the Board if they could subpoena the court records to find out how many times the police were called out to the home.

Mr. Fitz Gibbon stated that someone here would have to bring the records to us. We do not have subpoena power. Our actions are governed by criteria in the Planning and Zoning Code, which does not include a subpoena. We do not go on a hunt for additional information. Mr. Fitz Gibbon explained that we hold a public hearing to ask the public to provide us with the information they feel is relevant. He noted that it is part of the criteria to consider the effect of the variance on the neighborhood.

Mark Reynolds stated that one of the things that we have seen is not always practical and may not be helpful in this instance. Still, we have ruled on a couple of other fences that have had a similar situation where they have had to come to us because there is a multi-material fence that would be somewhere across the drive access in terms of a gate, and this is only an option not to need a variance for this fence. We work with the applicants to determine a solution that does not need a variance because that is the best-case scenario. Some are granted because there is no reasonable solution to alleviate the applicant's problem, and that is our job to weigh a reasonable solution or no reasonable solutions.

Devin Malcolm, 1745 Hila Way, stated that he and Morgan planned on putting a moss wall to add texture to the fence so the neighbor wouldn't have to see the wood. We should have spoken to the neighbors but didn't have time.

Mr. Fitz Gibbon closed the public hearing.

Jason Anderson made a motion to approve the application BZA-24-8 as presented. Jeff Battig seconded the motion.

Jason Anderson voted no and stated that many pieces of this application fit and don't fit, which are good ideas that could come from something new but are not part of what this application is. Work needs to be done to accommodate the code better.

Jeff Battig voted yes and stated that there are special conditions, one being that this is a corner lot.

Martha Bollinger voted yes and stated that the neighborhood wants to see harmony in the neighborhood for this. However, hearing the sightlines and the dog, there is a need for this because of containment to protect the neighbors. She said the variance was substantial and the minimum necessary to make possible use of the land.

Jennifer Shatzer voted yes and stated that the fence looked nice the way it was. Adding landscaping and working with it in the future will only improve what is there.

Mark Reynolds voted yes and stated that he can see both sides, as we have seen over the last few months, and see everyone's point of view on the matter. The fact that this is a corner lot makes this challenging. Had the house been situated further to the west with more room down to the southeast corner, it could have done something that is no fault of the applicant and the only yard there.

Stewart Fitz Gibbon voted yes for the reason cited by the Board. He stated that both sides have their point, which is fair. Other corner lots in the City of Wooster have fences, several of which have been before the Board and are a familiar problem. Always say that the situation is specific to that property. You cannot use it as a present. Each case stands on its own merits. He said a problem within the neighborhood was creating detriment, which we have tried to explore alternatives.

The motion passed 6-1.

BZA-24-10.

Habitat for Humanity requested an Area Variance from Planning and Zoning Code Section 1125.03(b)(4)(A)(i. and iv.) to allow a driveway within the required setback (shared drive across property line) and between the living space and right-of-way on parcels 64-02442.000 and 65-02445.000 located on the east side of Madison Avenue in an R-4 (Multi-Family Residential) zoning district.

Doug Drushal, 225 North Market Street, stated that Habitat for Humanity has two lots on Madison Avenue between Bob Evans and the OARDC. The lots are adjacent to one other. Mr. Druahsal explained that a house is being built on the northern of the two lots. Mr. Drushal continued that the driveway goes out to Madison Avenue, and when inspected, the inspector said that the driveway was too steep and you can't do that, and the house was already there. Mr. Drushal stated that the solution is to have a driveway that comes in from the southern of the two lots at an angle. Because of the lay of the land, there will be a pitch on that driveway that is acceptable for steepness to allow people to get into the house. Mr. Drushal explained that the plan that we are seeking approval for is to have a driveway that will have an easement created that will allow the owner of the northern lot to drive across the southern lot on the drive to have access to the north lot and the same driveway will service the southern lot when a house is built on that lot the variance is required because the code otherwise requires the driveway on the same lot as the house. Mr. Drushal continued the economic hardship because it would render the northern lot unusable without this variance. Mr. Drushal noted that most of the drive will be removed because it is too steep. Mr. Drushal stated that the easement document will address the maintenance of the drive and will be shared by both properties, and the easement will burden lot 3001. Mr. Drushal explained that there are a lot of shared driveways pre-zoning in the older parts of town. Mr. Drushal continued that the lot was unique due to the steep topography.

Tony Thompson, 8534 Krabill Road, Sterling, stated that the lot was flat and the grade established with nothing to modify. On the drawings, if you come out of the garage, there will be an approximately 20-foot turnaround. Mr. Thompson explained that you can pull in from this drive, pull into the garage, back out onto the turnaround, and come straight out on the proposed drive with a gradual grade.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application. Mr. Fitz Gibbon closed the public hearing.

Mark Reynolds made a motion to approve the application BZA-24-10 as presented. Martha Bollinger seconded the motion.

Mark Reynolds voted yes and stated that this checks all of the criteria.

Martha Bollinger voted yes and stated that the land was in exceptional circumstances and that the request was the minimum necessary to correct the situation.

Jason Anderson voted yes and stated that the elevations create exceptional circumstances.

Jeff Battig voted yes for reasons cited by the Board.

Jennifer Shatzer voted yes and said she saw the drive coming down Madison Avenue because of the unique circumstances.

Stewart Fitz Gibbon voted yes and stated that he was startled when he observed the driveway, noting that a glaze of ice on that driveway wouldn't have good outcomes for reasons cited by the Board.

The motion passed unanimously, 7-0.

IV. ADJOURNMENT

Jason Anderson moved to adjourn, and Jeff Battig seconded it. The motion passed unanimously, 7-0.

Stewart Fitz Gibbon, Board of Building and Zoning Appeals Chairman

Carla Jessie, Administrative Assistant