



# CITY of MEDINA

## Board of Zoning Appeals

### Regular Meeting Minutes

#### November 14, 2024

Meeting Date: November 14, 2024

Meeting Time: 7:00 PM

Present: Bert Humpal Paul Roszak, Mark Williams, Andrew Dutton (Community Development Director), and Sarah Tome (Administrative Assistant)

Absent: Kyle Funk

#### Approval of Minutes

Mr. Roszak made a motion to approve the minutes from July 11, 2024, as submitted.

The motion was seconded by Mr. Williams.

Vote:

Humpal            Y            Roszak            Y

Williams         Y

Approved        3-0

The Court Reporter swore in all attendees.

#### Applications

1.        Z24-23                    Brett Ruiz                    1051 Brandywine Drive                    VAR

Mr. Dutton stated that the applicant was proposing to construct a 356 sq. ft. (20 ft. x 17 ft. 9.5 in.) screened-in deck on the rear of the home. He added that the proposed screened-in deck extended 20 ft. from the northeast corner of the home and would have a gabled roof.

Mr. Dutton stated that Section 1121.05 of the Zoning Code required that principal structures in the R-1 zoning district must have a setback of 10 ft. from the property lines. He noted that screened-in decks with a roof were subject to the setback requirement. Mr. Dutton stated that the existing home was located at the required 10 ft. setback from the eastern property line. He stated that, as the home and property line were not parallel, the northeast corner of the screened-in deck was proposed at 8 ft. from the side property line.

Mr. Dutton stated that the applicant had indicated the following regarding the Standards for Variances and Appeals:

- Though the property would have a beneficial use without the variance, denial of the variance would limit the property's functionality and potentially its value.

- The variance was not substantial as the proposed screened-in deck was a minor improvement and the setback variance was a minimal distance.
- The essential character of the area would not be altered as screened-in decks were common and the project’s design was consistent with the neighborhood.
- The spirit and intent of the zoning requirement would be observed as the project would allow the homeowners to enhance their property while keeping with the neighborhood character.

Present for the case was Brett Ruiz, 3795 Forest Ridge Drive.

Mr. Humpal opened the public hearing. There were no questions or comments from the public. Mr. Williams asked if the deck could be moved closer to the bay window located at the rear of the house. Mr. Ruiz stated that it could not. Mr. Williams inquired as to whether the deck could be made narrower to meet setback requirements. Mr. Ruiz stated that, aesthetically, it made the most sense to have it in line with the house. Mr. Williams agreed with Mr. Ruiz on the placement of the deck.

Mr. Williams made a motion to approve the variance to Section 1121.05, stating that the variance was not substantial, the essential character of the neighborhood would not be substantially altered, and that the spirit and intent of the Zoning Code would be met.

Mr. Roszak seconded the motion.

Vote:

Rozzak	<u>Y</u>	Williams	<u>Y</u>
Humpal	<u>Y</u>		
Approved	<u>3-0</u>		

2.        Z24-24        John Potter        322 West Smith Road        VAR

Mr. Dutton stated that the property had previously contained a single-family home, which had been demolished in 2018. He added that the site was currently vacant and backed up to a creek. Mr. Dutton noted that the property was also located in the Transitional Corridor Overlay (TC-OV) and the Planning Commission had reviewed that portion of the application earlier in the evening granting conditional approval. Mr. Dutton stated that the applicant was proposing a new two-family residential building with the following general characteristics:

- Two 1,635 sq. ft. units (approx.) each with an attached one car garage
- A two story structure with a pitched roof with black asphalt shingles
- A front porch for each unit with a black metal roof
- A 130 ft. setback from the right-of-way
- A front elevation with vinyl board and batten siding

Mr. Dutton stated that there were several variances involved in the application, with the first being a use variance. He noted that Section 1135.03 indicated permitted uses in the C-2 zoning

district, which were predominantly commercial. He added that the proposed two-family residential use was not a permitted use in the C-2 zoning district.

Mr. Dutton stated that the applicant had indicated the following regarding the Standards for Variances and Appeals:

- The variance stemmed from a unique condition as the property was on a block that was zoned C-2 and contained single-family and two-family residences.
- The rights of adjacent owners would not be affected as a single-family residence was previously on the property and a neighboring property was a two-family residence.
- There was no other economically viable use for the property and a residential use required a variance.

Mr. Dutton stated that, while the subject requirements of Section 1135 of the Zoning Code were more appropriately applied to commercial uses, they were applicable to the property. He noted that Section 1135.06 required a minimum rear yard setback of 50 ft. for the principal structure. Mr. Dutton stated that the applicant had proposed a rear yard setback of 14 ft. 5 in. He noted that, though a 25 ft. riparian setback was shown on the submitted plan, the setback was a recommendation by the City's Engineering Department and was not a formal requirement.

Mr. Dutton stated that Section 1135.08(a) stated that off-street parking was not permitted in the front yard. He added that the applicant had proposed parking in the front yard in a driveway shared by the two units.

Mr. Dutton noted that Section 1135.13(c)(1) stated that no more than 15% of the area of the building facing the right-of-way could be vinyl. He added that the proposed building elevation facing the West Smith Road right-of-way was clad in vinyl board and batten siding. Mr. Dutton stated that, as part of the TC-OV review, the Planning Commission had required shake siding in the peaks and shutters on the windows facing West Smith Road.

Mr. Dutton stated that the applicant had indicated the following regarding the Standards for Variances and Appeals:

#### 1135.06 – Rear Yard Setback

- The variance was not substantial as the 50 ft. rear setback created a hardship for the property and adjacent properties were within the required rear yard setback.
- The essential character of the neighborhood would not be altered as the proposed two-family residence was aligned with adjacent properties.
- The spirit and intent behind the zoning requirement would be observed as the residence would enhance the neighborhood, align with area residences, and incorporated increased side yard setbacks.

#### 1135.08(a) – Parking in the Front Yard

- The only beneficial use of the property was residential and the proposed standard was a commercial requirement.

- The essential character of the neighborhood would not be altered as the proposed drive and parking in the front yard did not affect the residential side of West Smith Road.
- There was no option other than a variance as the size of the lot was not conducive for parking in the side yard. In addition, residential uses typically included parking in the front yard.

#### 1135.13(c)(1) – Vinyl Siding

- The variance was not substantial and the essential character of the neighborhood would not be altered as existing homes on the street were completely clad in vinyl siding.
- There was no option other than a variance as another exterior material would not be appropriate for the area.
- The spirit and intent behind the zoning requirement would be observed as the proposed vinyl board and batten siding would have an improved appearance.

Present for the case were David Wascak, 196 Marko Lane, in Brooklyn Heights, and David Leach of the Cornice Company, 3200 West Market Street, Suite 6, in Fairlawn. Mr. Leach stated that the reasoning for the position of the house was to keep it in line with the duplex next door.

Mr. Humpal inquired as to the Planning Commission's approval. Mr. Dutton stated that a TC-OV review was not a Site Plan or use review. He continued the TC-OV review determined if the proposal kept with neighborhood aesthetics.

Mr. Humpal opened the public hearing.

Gregory Happ, 331 E Washington Street, stated that he was in attendance representing the owners of the property at 328 West Smith Road. Mr. Happ stated that his clients objected to the applicants wanting to place a duplex on a single-family lot. He noted that there had been a single-family home on the site for 100 years. He added that the applicant was requesting the Board to give a variance so they could build a duplex on a C-2 lot, where it was not permitted, and to apply the C-2 setback requirements, as opposed to residential requirements.

Mr. Happ stated that there was a drainage pipe on his client's property that ran to the creek to the rear of the properties. He continued that his clients felt it would be impossible for the city to perform maintenance on the pipe with a duplex next door. He stated that he felt the applicant had not shown any practical difficulties to developing the property, rather they had simply presented a plan. He added that if the property needed to be rezoned, it should be rezoned, rather than granted a variance.

Mr. Humpal asked about rezoning the property. Mr. Dutton stated that if a rezoning occurred, the city would likely consider rezoning all of the properties on the south side of West Smith Road, as the houses located there were nonconforming uses. There was a further discussion on the rezoning process.

Mr. Humpal inquired as to the pipe referred to by Mr. Happ. Mr. Dutton stated that the City Engineer reviewed all new homes for drainage and utility easements. He noted that the City's GIS system did not show a pipe leading back to the creek. He added that his understanding was that the pipe was located on the neighbor's property, as opposed to the subject property.

Mr. Humpal asked if there were any other comments from neighbors. Mr. Dutton stated that he had spoken to Mr. Kalina, who had had questions about the project. Mr. Happ reiterated that he objected to the fact that he felt they were rezoning a lot via variance, rather than by the proper means. He noted that he felt they should rezone the whole street.

Mr. Humpal stated that he could not see how a commercial use could be put on a property that had housing on both sides. Mr. Dutton noted that a rezoning request would most likely change the zoning to R-3, which was the zoning district of adjacent residential properties. He added that the proposed duplex would meet side setback requirements in the R-3 zoning district, and would require a variance to the rear setback, as presented in the current case.

Mr. Williams inquired as to whether or not the previous home had met the setback requirements. Mr. Dutton stated that the previous home was located on the eastern side of the property, and had a rear setback of approximately 35 ft.

Mr. Williams stated that his challenge was not in building a residence on the property, but rather that it would be a duplex on the site. Mr. Leach stated that he saw Mr. Williams' point, but noted that there was a duplex located next door. He noted that they felt the duplex would add to the street. Mr. Williams stated that his main concern with the duplex was due to lot size and the rear setback variance.

After discussion, Mr. Leach asked the Board to consider the moving the structure closer to the street, increasing the rear setback. This proposal was discussed by the Board. Mr. Williams stated that he would locate the structure between the setbacks for the adjacent single family home and the duplex to the east. It was noted that the proposed change would require that the applicant submit revised plans to the Planning Commission.

After further discussion, this application was tabled by the applicant.

3.           Z24-25           Greg Seifert                           969 North Court Street                           VAR

Mr. Dutton stated that, prior to the reconstruction of North Court Street, the Sgt. Clean Car Wash property shared a full access drive with the property to the north, occupied by Burger King. He added that after the reconstruction project, Burger King lost access to North Court Street and the Sgt. Clean Car Wash access drive was changed to right-in/right-out only.

Mr. Dutton stated that the applicant was proposing the widening of the apron of the North Court Street access drive. He noted that Section 1145.10(e) required a maximum driveway width of 24 ft. at the right-of-way and 38 ft. at the curb. He added that the existing access drive on North Court Street was 24 ft. wide at the right-of-way and 46 ft. 6 in. wide at the curb. Mr. Dutton stated that the applicant was proposing to widen the access drive to 29 ft. 6 in. at the right-of-way while maintaining the width of 46 ft. 6 in. at the curb.

Mr. Dutton stated that the applicant had indicated the following regarding the Standards for Variances and Appeals:

- There could be a beneficial use of the property, however, the site’s configuration causes customers to perform an “S” movement when entering from North Court Street, resulting in damage to the tree lawn.
- The essential character of the neighborhood would not be altered by granting the variance.
- When the property was purchased, North Court Street was being reconstructed and issues with the redesigned access drives were not anticipated.

Present for the case was Greg Seifert, representing Sgt. Clean Car Wash, 3673 Massillon Road in Uniontown. Mr. Seifert stated that he was trying to keep customers from running over the curb to the parking lot and potentially damaging their vehicles. He noted that he had been unaware that this issue would occur when the road was under construction, so he was asking for the variance to fix an issue they had not caused.

Mr. Humpal opened the public hearing. There were no questions or comments from the public.

Mr. Roszak stated that he was uncomfortable with increasing the width of the drive, as the drive already exceeded code requirements. He added that he would support moving the drive.

Mr. Seifert noted that they were not proposing to widen the access drive at the street and were attempting to fix the damage done to the property. Mr. Seifert stated that, if the drive was moved, customers entering the property would need to make an “S” movement.

Mr. Roszak noted that the driveway width was a code requirement and that other businesses in the area met the requirement. After further discussion, Mr. Seifert inquired if there was a lesser solution that the Board would be comfortable with. He asked if the Board would be comfortable with the applicant filling in the corner where the wear was occurring, rather than extending the drive the whole way to the street.

Mr. Roszak inquired as to whether or not it would be possible to fill in the damaged section with a section of concrete at a 90-degree angle to Sgt Clean’s parking lot. Mr. Seifert stated that filling in that area would take care of the section they were concerned about.

After further discussion, Mr. Roszak made a motion to grant the variance to Section 1145.10(e) with the condition that additional concrete shall only expand 3 ft. north of the existing drive at the right of way, approximately at the location of an existing joint, and extend perpendicular to the existing apron. Mr. Roszak stated that the variance was not substantial and the essential character of the neighborhood would not be substantially altered.

Mr. Williams seconded the motion.

Vote:

Williams	<u>Y</u>	Humpal	<u>Y</u>
Rozzak	<u>Y</u>		
Approved	<u>3-0</u>		

Mr. Dutton stated that an approximately 42 sq. ft. (6 ft. x 7 ft.) shed was installed to the southeast of the home, within a fenced area. He added that, though the shed had been installed in the past few years, it was recently identified by a city inspector and forwarded for permitting. Mr. Dutton stated that Section 1113.05(I)(2)(A.)(2.) required that accessory structures must be located in the rear yard. He added that Section 1105.164 stated the following:

- "...On corner lots, there shall be two (2) front yards, a side yard, and a rear yard..." and
- "Front yard" means a yard extending across the full width of a lot and being the perpendicular distance between the street right-of-way line and the nearest portion of any building.

Mr. Dutton stated that the subject corner lot had front yards adjacent to Ryeland Circle and Meadow Gateway. He noted that the proposed accessory building was located in the front yard between the home and Meadow Gateway and setback 18 ft. from the right-of-way. He added that to be approved, the shed would need to be moved to the rear yard.

Mr. Dutton stated that the applicant had indicated the following regarding the Standards for Variances and Appeals:

- The variance was not substantial and the essential character of the neighborhood would not be altered as the style of the shed would blend in with the home.
- The applicant was unaware of the restrictions and believed the shed to be in the backyard.
- The predicament cannot not be obviated through another method as the location was the only flat portion of the yard.

Present for the case was Aaron Luther, 253 Ryeland Circle. Mr. Luther referred to Section 1107.08(b)(2) of the Zoning Code, with specific reference to "with such conditions and safeguards as it may determine to be necessary so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done". Mr. Luther stated that he felt two out of those three items were evident in his application. He noted that his 6 ft. x 7 ft., non-fixed plastic shed did not pose any obstruction to traffic. He noted that the shed had been in that position for three and a half years and had not been an issue in the past. Mr. Luther stated that he understood the position of the city regarding the corner lot having two front yards, however, he viewed the section of the lot in question as his backyard.

Mr. Humpal inquired if the fence met Zoning Code requirements. Mr. Luther stated that it was a 5 ft. fence and that he had pulled the necessary permits when it had been installed. Mr. Dutton stated that a fence on a corner lot was required to be 3 ft. tall unless it was located more than 15 ft. from the right-of-way. He added that since the fence was located 18 ft. from the right-of-way it was allowed to be up to 6 ft. tall.

Mr. Humpal stated that he suspected the portion of the Zoning Code in question was established to ensure the appearance of the surrounding neighborhood. Mr. Dutton stated that he believed it was for aesthetic purposes

Mr. Humpal opened the public hearing. There were no questions or comments from the public. Mr. Humpal asked if the city had received any comments from the neighbors. Mr. Dutton stated that he had not.

Mr. Williams stated that he did not have any issues with the variance. Mr. Roszak stated that he believed the code section intended to maintain the character of the neighborhood and he felt that it looked like the shed was in the front yard on Meadow Gateway. Mr. Humpal stated that he also had an issue with the proposal. He noted that a solid fence would have provided more screening for the shed.

Mr. Luther stated that there had been no issues from any of the surrounding neighbors. Mr. Humpal stated that if the applicant had approached the Board at the time when he put in the shed, they could have dealt with the issue upfront.

Mr. Luther stated that it was a plastic shed that he had put together in a few hours with help from his brother and he was unaware that the shed required a permit. Mr. Luther stated that there were no other options for shed placement in his yard, due to its slope. Mr. Humpal noted that the staff report had indicated that there were other potential flat locations. There was a discussion as to the yard and possible locations for the shed.

Mr. Williams asked if Mr. Roszak would be comfortable with some sort of screening, such as arborvitae. There was a discussion on potential plants for screening. Mr. Humpal noted that they could include in the motion that the applicant plant the trees or that the shed be moved to comply with the Zoning Code requirements.

After further discussion, Mr. Roszak proposed a motion for approval with the condition that trees, such as pines, of an initial height of no less than 6 ft. be placed along the fencing on Meadow Gateway and towards the house on Ryeland Circle, at a distance of 12 ft. on center.

Mr. Luther objected to the number of trees indicated by Mr. Roszak.

The motion died due to the lack of a second.

After further discussion, this application was tabled by the applicant.

### **Adjournment**

Having no further business, the meeting was adjourned.

Respectfully submitted,

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Sarah Tome

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Bert Humpal, Chairman