

**MINUTES OF THE REGULAR MEETING OF THE
AMBERLEY VILLAGE BOARD OF ZONING APPEALS/PLANNING COMMISSION
HELD ONLINE VIA ZOOM
MONDAY, MAY 4, 2020**

Chairperson Richard Bardach called to order the regular meeting of the Amberley Village Board of Zoning Appeals/Planning Commission held via the Internet on Monday, May 4, 2020 at 7:00 p.m.

Roll was called:

PRESENT:

Rich Bardach
Rick Lauer
Susan Rissover
Scott Wolf
Scott Rubenstein

ALSO PRESENT:

Kevin McDonough
Wes Brown
Scot Lahrmer
Tammy Reasoner

Chairperson Bardach welcomed everyone to the meeting and led those in attendance through the Pledge of Allegiance.

Chairperson Bardach asked if there were any corrections to the minutes of the April 6, 2020 meeting. There being none, the minutes were accepted as submitted.

BOARD OF ZONING APPEALS

CASE NO 2020-1644

Mr. Bardach called for Case No. 2020-1644. Mr. Brown introduced the case, in which homeowner Ralph Doering of 3160 North Whitetree Circle is requesting a variance to Zoning Code Section 154.14 (B). The variance would allow for the replacement of an existing 32' long privacy panel in the rear yard. Village code states that a privacy panel can be no more than 16' long. The location of his home is on a corner, where there are currently privacy panels. While both panels would have otherwise been grandfathered in, no approval was able to be located on file for the existing panels, and changes to material and the length of one of the panels bring Mr. Doering before the Board of Zoning Appeals.

Mr. Doering joined the meeting via video, and stated he had been an owner in the Village since 2006, and the privacy panels were there when he purchased the house. He estimated they were approximately fifteen years old at the time of purchase. He said the fence had deteriorated to the point where maintenance was difficult and it was detracting from the house. He said the uneven land where Lamarque and Whitetree meet necessitated the extended length of one of the panels.

Mr. Doering shared photos of the property to better demonstrate the current wood fencing and the white vinyl he planned to replace it with. Mr. Lahrmer reported there had been no feedback from neighbors surrounding Mr. Doering's property.

Ms. Rissover asked if the existing bushes surrounding the fence would remain. Mr. Doering said the bushes were in varying states of overgrowth, and would be removed to install the new fencing. His intention would be to replace the bushes with new burning bush, which he said would look great against the white fence.

Ms. Rissover said she felt the new bushes should be a stipulation of approval for this case, and moved to approve the fence as proposed with the understanding that bushes would be planted along the Lamarque side of the property. Seconded by Mr. Wolf, Case No. 2020-1644 was approved unanimously.

Mr. Brown said he would get an approval letter and stamped plans to Mr. Doering in the next couple of days.

CASE NO. 2020-1645

Mr. Brown provided a summary of Case No. 2020-1645, in which homeowners Arianne Smith and Kathryn Waligura of 8301 Lynnehaven Drive are requesting a variance to Zoning Code Section 154.14 (A). The variance would allow for the construction of a 4-board Kentucky Board fence, 16' from the street in the Lynnehaven Court front yard. Village code states that a fence shall not be permitted in any part of a front yard. This is also a corner lot.

The fence would allow the dog and future children to utilize the rear entrance door to safely enjoy the entirety of their yard. Landscaping is planned for the fence. In addition, their letter stated to remain within the Code, they would be unable to fully utilize the property. Being on a corner, where they essentially have two front yards, they are requesting the variance to make full use of their property.

Ms. Smith and Ms. Waligura stated they had been homeowners in the Village for a year and a half. They utilized photos to demonstrate how the fence, if put in according to code, would cut use of their property in half.

They shared photographs of how they access the house to better understand the flow of the property and how they intend to use it. They stated they have invested in the house and plan to be there awhile.

Mr. Lauer asked if the variance were only requested because it is a corner lot, to which Mr. Brown stated yes. Ms. Rissover asked about the impact of driveway access. The homeowners stated they had a gate incorporated into the fencing plan. Her concern was it would encourage on-street parking, but the homeowners stated their plan was to park in the driveway/garage, not on the street.

Mr. Rubenstein asked if the plan included the fencing type and size, which was then shared on screen.

Ms. Philomena Sidle, who lives next door, asked if the photos accurately depicted what the fence would look like once installed. Discussion was held regarding the unobstructed view the fence would provide.

Mr. Lahrmer said there had not been any negative feedback regarding this case, although he recalled having received a letter regarding one of the cases which was not included in the packet.

Mr. Wolf requested clarification that the property wouldn't need a variance were it not on a corner lot, which Mr. Brown confirmed. He also asked if the landscaping could be a condition of approval of the case, which Mr. Brown also confirmed.

After a review of the submission, Ms. Rissover stated there was probably enough information to approve the variance and deferred to the homeowners to decide what they wished to plant along the fence. Mr. Wolf moved that Case No. 2020-1645 be approved with the condition that landscaping be planted on the street side of the fence. Mr. Lauer seconded the motion.

Ms. Sidle requested that the homeowners make sure the fence is fully on their side of the yard, to which they agreed, and the variance was approved unanimously.

CASE NO. 2020-1646

Mr. Brown introduced and presented the variance request of Faigie Rosedale, property owner of 6885 Fair Oaks Drive, pertaining to Zoning Code Sections 154.23 (B)(2)(a) and 154.28 (A). The variances would allow for the construction of a 2-car attached garage on the east side of the existing house, with the garage doors facing north toward Section Road and allow the garage to encroach 4' into the required front yard along Fair Oaks.

Ms. Rosedale is currently renovating the house at 6885 Fair Oaks in order to move into while their other property is being remodeled. Detailed plans will be completed once the variance is approved. Being on a corner lot and in a flood plain, they are limited in placement options for the garage. The garage falls within the required size range, however, the variances are required to accommodate for setback and because the garage would need to open facing the street.

Mr. and Mrs. Rosedale stated they were long-time residents of the Village, and said they were trying to update an older, run-down home. He said the garage would be an improvement on current detached garage.

Ms. Rissover asked if it were possible to have the garage doors face Fair Oaks vs. Section, as she felt perhaps it would be more accessible. Mr. Rosedale said this would require a larger structure, and wouldn't be as accessible to cars circulating through the property.

Mr. Rubenstein asked if the position of the house technically had two front yards. Mr. Brown referred to a CAGIS map, which confirmed the “feel” of two front yards.

Ms. Rissover recalled there had been a garage torn down and rebuilt, and asked if there had ever been a variance. Mr. Rosedale said they had owned the house for over a decade, and it had always been there. Ms. Rissover also asked regarding the hedge surrounding the property, which should have had a variance, but she didn’t recall having seen one. Mr. Rosedale said they were unaware one was necessary.

Mr. Rubenstein stated he had grown up across the street from the property, and didn’t recall any changes to the garage. Ms. Rissover recalled a differing roofline at some point during her 23 years as an Amberley Village resident.

Mr. Lauer recused himself as the neighbor living across the street from the property.

Mr. Rubenstein asked regarding the variance for the doors facing Section Road, to which Mr. Brown responded a variance would be needed regardless, as the doors would face either Section or Fair Oaks.

Ms. Rissover said she had reservations regarding the precedents the variances would carry, and expressed concern over past variances that should have been filed.

Mr. Rubenstein again stated he had never known the garage to have been rebuilt, and Mr. Wolf asked if perhaps the existence of a flood plain on the property might imply a hardship. Mr. Brown stated there was no way to reduce the capacity of the creek floodway without FEMA approval. Ms. Rissover asked further about the flood issues.

The Rosedales stated they had filed four insurance claims on the property already, and they will need a generator to ensure they can adequately drain water that collects during storms. Ms. Rissover then stated she was impressed with the investment of the homeowners in what could otherwise become a difficult property to sell.

Mr. Bardach moved to approve the variance request as submitted. Seconded by Mr. Rubenstein, the motion was approved unanimously (with the abstention of Mr. Lauer).

Mr. Lahrmer stated he wished to add to the comments that the neighbor’s letter referenced earlier in the meeting had been regarding 8301 Lynnehaven Drive, and was received from Bruce Lazarus and Phil Weintraub of 3140 N. Whitetree Circle in support of Mr. Doering’s variance request.

PLANNING COMMISSION

PUBLIC HEARING: CASE NO. 2020-1648

Mr. Lahrmer introduced and presented Case No. 2020-1648, Adoption of Chapter 160: Small Cell Facilities and Wireless Support Structures to Title XV Land Usage and Regulation Thereof.

He said the proposed text amendments to Chapter 157 of the Amberley Village Code would establish regulations for small cell facilities and wireless support, which the Village did not currently have in place. He provided background on the passage of Ohio HB 478, which left only minor regulatory powers to municipalities with regard to the regulation of small cell facilities. Currently Amberley Village Code does not address small cell facilities. Having been recently approached by a telecommunications carrier regarding small cell facilities, he said it would be desirable to set standards before faced with a formal request.

Mr. Lahrmer said the proposed ordinance identifies maximum pole height, as well as colocation opportunities, spacing requirements, and proximity to residential properties. He said the ordinance also allows for selection of more visually aesthetic poles over the traditional wood poles

The proposed changes, he said, are an effort to have some control over the integration of the small cell facilities into the Amberley Village environment, and asked the Planning Commission to comment and make recommendations to Council.

Mr. Lahrmer showed a Powerpoint presentation from Liz Fields of McBride Dale Clarion outlining more information regarding small cell towers and depicting a black matte metal pole being used in other areas to aid in better understanding small cell facilities and the need for regulation. He said telecommunications is supplementing with small cell facilities that place more focus on transfer of data.

Mr. Lauer asked who had drafted the language, to which Mr. McDonough replied he had. He said other communities were researched to determine what they are doing, however, many have not addressed the issue. Staff and Village Solicitor Kevin McDonough reviewed existing municipal codes from Mason, Loveland, and Blue Ash in the drafting of the language for Amberley Village. Mr. Lauer said his concern was that, by definition, the language could be construed to not regulate small cell facilities that do not meet the description.

Mr. McDonough said he relied heavily upon Mason's language and that of ORC 4939.01 to ensure consistency in the definition of small cell facilities.

Mr. Lauer's concerns, he said, were that perhaps too many decisions would be left up to engineers. Mr. Lahrmer stated this was why we wanted to regulate small cell facilities, and Mr. McDonough restated this was imposed on municipalities by Ohio H.B. 478.

Mr. Wolf stated it seemed we don't have much choice.

Mr. Lauer asked if the Planning Commission had any say, and whether or not it could insert itself in the process, to which Mr. McDonough stated the Village Engineer or a designee (such as the Village Manager) has to approve small cell structures, but the guidelines are firmly set forth in the Ohio Revised Code.

Mr. McDonough stated passage was important as we don't know how long before we will be formally approached, but language can be amended at a later date if needed. Mr. Lahrmer also stated health and safety are not able to be regulated by municipalities.

Mr. Bardach asked if anyone wished to speak. Ms. Katie Schneider of 7801 Sagamore Drive stated she had an interest in and has started researching 5G, and has concerns with both radiation and preservation of the Village feel.

Mr. Rubenstein asked Mr. McDonough if there were any insights into predominantly residential Villages our size. Mr. McDonough said Bexley was closest to our size that he had reviewed.

Ms. Rissover asked if the proposed language is the maximum level of regulation allowed under the Ohio Revised Code, to which both Mr. Lahrmer and Mr. McDonough replied yes.

Mr. Wolf moved to recommend the language as written to Council, which was seconded by Mr. Bardach. The motion passed unanimously.

There being no further business, Mr. Bardach adjourned the meeting at 8:31 p.m.

Tammy Reasoner, Clerk of Council

Richard Bardach, Chairperson