

**BUILDING & ZONING BOARD OF APPEALS
CITY OF NORTH OLMS TED
MINUTES OF OCTOBER 3, 2022**

ROLL CALL

Chairman Papotto called the meeting to order at 7:00 p.m. in Council Chambers.

Present: Bob Papotto, Dan Rahm, Ralph Mackey, Suzie Patton

Staff: Law Director Michael Gareau, Jr., Building Coordinator Katie Seeley, City Planner Nahid Parsipour, Administrative Assistant Kristine Jones.

REVIEW AND CORRECTION OF MINUTES

The meeting minutes of September 12, 2022 will be tabled until the next Building & Zoning Board of Appeals Meeting on November 7, 2022.

RESIDENTIAL APPEALS AND REQUESTS

22-22985; Superior Fence & Rail/Timothy Harvey – 4489 Michael Ave.

Representative: Doug Willse; 6909 Engle Rd., Suite 35 Middleburg Hts., OH

Proposal of a fence. Property is zoned C-One Family Residence.

The following variance is requested:

1. A 5 in. variance to the minimum separation between fences on a common property line; code requires 24 in., applicant provides 19 in., Section 1369.03(D)

Mr. Willse explained that they installed the fence per the customer's desires in how they wanted to utilize their yard space. However, when they installed the fence it is only 19 inches from the neighbors existing wood fence on the east side of the property. He noted that there is adequate space in between the fences to provide ground maintenance.

Law Director Gareau explained that this is not a variance request under the zoning code but it is a modification to the Building Code. He referenced 1315.02 of the code "enforcement thereof would be manifest injustice, would be contrary to the spirit and purpose of this Building Code or public interest or when, in its opinion, the interpretation of the Building Commissioner should be modified or reversed. Therefore, this is the standard the board would be looking at.

Ms. Patton asked if a permit was pulled prior to the installation of the fence. Mr. Willse stated that they did have a permit, and an inspector came out to inspect the post holes and there was no indication of any potential violations therefore they assumed they were within the city's regulations. Ms. Seeley indicated that the City does not do post hole inspections, only final.

Ms. Seeley stated that all of the City's permits for fences are stamped and state they must maintain two feet between parallel neighboring fences and the fence cannot encroach on a neighbor's property and property lines must be marked. Therefore, all of the permits ahead of installation state they need to maintain the two feet from the neighboring property line. She

stated that a permit was issued however it failed inspection because the fence was not two feet between neighboring fences.

Mr. Mackey asked if there are any easements at the rear or sides of the property that would affect any placements of the fence. Ms. Seeley answered that any easements would have been identified during the permit process. Mr. Willse explained that they passed the initial inspection of the post hole placements. Ms. Seeley stated that they do not do post hole inspections and they only do a final inspection in which they failed.

Mr. Rahm commented that it is a difficult decision since the fence is already installed, however the area between the fences seem to be manageable. Ms. Patton agreed that is always tough when the board is looking at a case when the installation has already been completed. She also noted that this is not ideal however there is still adequate space to maintain the grass between the fences.

Mr. Rahm moved, seconded by Ms. Patton to approve the following variance for 22-22985; Superior Fence & Rail/Timothy Harvey – 4489 Michael Ave:

- 1. A 5 in. variance to the minimum separation between fences on a common property line; code requires 24 in., applicant provides 19 in., Section 1369.03(D)**

22-22986; Superior Fence & Rail /Tiffany Dawson – 6487 Surrey Dr.

Representative: Doug Willse; 6909 Engel Rd. Suite 35 Middleburg Heights and Ken Miller; 6475 Surrey Drive.

Proposal of a fence. Property is zoned A-One Family Residence.

The following variance is requested:

1. A 24 in. variance to the minimum separation between fences on a common property line; code requires 24 in., applicant provides 0 in., Section 1369.03(D)

Mr. Willse explained that on three sides of the property the fence was installed with adequate clearance however the fence on the north side of the property line is installed up against the neighbor's chain-link fence. He stated that they installed the fence per Ms. Dawson's request and they were under the assumption that she had permission from Mr. Miller to do so.

Mr. Miller stated that he was unaware that the fence was going to be built and explained that with a zero clearance it is impossible to do any type of maintenance in-between the fences. Also, when he installed his fence it was installed three inches from the property line to ensure clearance that the fence was installed on his property. He is wondering if Ms. Dawson's fence is encroaching onto his property line.

Ms. Seeley commented that the Building Department is not in favor of this request since the applicant could have abided by the twenty-four-inch separation. The City does not get involved with property line disputes.

Law Director Gareau commented that Mr. Millers concern with encroachment onto this property is a legitimate concern and the lot line would have to be resolved by a surveyor. Also, the City

does not resolve any property line disputes and it is the responsibility of the property owner to ensure that they are installing on their property.

Mr. Mackey stated that if the fence is installed on Mr. Millers property and he decides to sell his home this could result in potential problems. Mr. Gareau, stated that the determination of the lot line should be identified and a surveyor should be hired.

Mr. Papotto asked Ms. Seeley if a survey needs to be done before the installation of a fence. Ms. Seeley responded that not a survey but the property lines must be marked. She explained that it is the property owner's responsibility to know where their property lines are not the City's.

Ms. Patton stated that the request could adversely affect a neighbors. Mr. Rahm commented that there are too many un-addressed questions regarding the property line. Mr. Mackey stated he is also not in favor of the request given the legal complications that could arise.

Mr. Gareau stated that the fence would need to be removed and established to meet code. They will also need to identify where the property line is. Furthermore, the current fence cannot stay the way it is because the variance request was denied.

Mr. Rahm moved, seconded by Ms. Patton to approve the following variance for 22-22986; Superior Fence & Rail /Tiffany Dawson – 6487 Surrey Dr.

- 1. A 24 in. variance to the minimum separation between fences on a common property line; code requires 24 in., applicant provides 0 in., Section 1369.03(D)**

Motion Denied 0-4

22-22988; Superior Fence & Rail/ Stephen Ellis – 23326 Sharron Drive.

Representative: Doug Willse; 6909 Engle Rd Suite 35 Middleburg Hts. & Stephen Ellis; 23326 Sharon Dr.

Proposal of a Fence. Property is zoned C-One Family Residence.

The following variance is requested:

1. A 9 in. variance to the minimum separation between fences on a common property line; code requires 24 in., applicant provides 15 in., Section 1369.03(D)
2. A 6 in. variance to the minimum separation between fences on a common property line; code requires 24 in., applicant provides 18 in., Section 1369.03(D)

Note: The fence on the east side of the property installed 15 in. from the property.

Mr. Ellis explained that since the fence has been installed he has been able to maintain the grass between the two fences and believes there is adequate clearance.

Ms. Patton asked Mr. Willse that he mentioned he usually follows the twelve-inch standard for in between property lines, however there have been three cases in violation of the required twenty-four-inch separation and asked if he has any resolutions. Mr. Willse explained that they are a relatively new company and they are in the process of documenting the various municipalities to make sure they have a clear understanding of the required codes.

Mr. Rahm stated that once again the fence has already been installed and it makes it a difficult decision. Mr. Mackey commented that it is the responsibility of the property owner and the contractor to research and make sure they are installing per code.

Mr. Rahm moved, seconded by Ms. Patton to approve the following variance for 22-22988; Superior Fence & Rail/ Stephen Ellis – 23326 Sharron Drive.

- 1. A 9 in. variance to the minimum separation between fences on a common property line; code requires 24 in., applicant provides 15 in., Section 1369.03(D)**
- 2. A 6 in. variance to the minimum separation between fences on a common property line; code requires 24 in., applicant provides 18 in., Section 1369.03(D)**

Motions Passed 4-0.

22-22997; Dominic Passalacqua – 23524 Marion Rd.

Representative: Dominic Passalacqua; 23524 Marion Rd.

Proposal of a Front Porch. Property is zoned C-One Family Residence.

The following variance is requested:

1. A variance to enlarge a nonconforming dwelling that does not conform to all setback requirements; code does not permit, Section 1165.02(B)(2).

Note: Dwelling is nonconforming in that the existing front setback is approximately 36 ft. where 50 ft. is required in front yards.

2. An approximate 20 ft. variance for front yard setback; code requires 50 ft., applicant shows approximately 30 ft., Section 1135.06(A)

Mr. Passalacqua explained his current front porch is an eight by eighteen-foot wood framed porch with a metal awing. Currently the awing is falling apart and he is proposing a new front porch.

Ms. Seeley explained that the homes on this block do not conform to the fifty-foot setback and it would be very hard for any homeowner to make improvements to their homes due to the front yard setback requirement. If the homeowner wanted to do any type of improvement they would need to come in for a variance due to the requirements. She also noted that they do not have a record of any permit or variances being granted for the existing front porch.

Mr. Rahm asked if the new front porch will be the same size as the existing front porch. Mr. Passalacqua answered that his proposal is smaller and it will be six feet by eleven feet, which will be two feet further back from the road than the existing porch. Mr. Mackey commented that the drawings that were submitted will improve the appearance of his property.

Mr. Rahm moved, seconded by Ms. Patton to approve the following variance for 22-22997; Dominic Passalacqua – 23524 Marion Rd.

- 1. A variance to enlarge a nonconforming dwelling that does not conform to all setback requirements; code does not permit, Section 1165.02(B)(2).**

Note: Dwelling is nonconforming in that the existing front setback is approximately 36 ft. where 50 ft. is required in front yards.

- 2. An approximate 20 ft. variance for front yard setback; code requires 50 ft., applicant shows approximately 30 ft., Section 1135.06(A)**

Motion Passed 4-0.

22-23014; Fadi Maalouf – 23955 Maple Ridge Rd.

Representative: Fadi Maalouf; 23955 Maple Ridge, Ron and Josephine Kolach; 23986 Maple Ridge Rd.

Proposal for an accessory structure in front yard. Property is zoned C-One Family Residence.

1. A variance for an accessory structure (fountain) in the front yard; code does not permit; applicant shows accessory structure (fountain) in front yard. Section 1135.02 (C)(1)

Mr. Maalouf explained that it is a decorative fountain that is used for decoration. He commented that he was unaware that he needed to get approval to place the fountain in his front yard. This fountain will also be solar-powered.

Mr. Kolach commented that the front yards in the neighborhood are relatively small and the size of the structure is out of place for the neighborhood. The base of the fountain is made out of cement and cannot be seasonably removed. He noted that any potential homebuyers might see this structure as an eyesore for the neighborhood. Also, since they live very close to Maple School and the proximity of the fountain to the sidewalk he is very concerned with the safety of the children. Mr. Kolach stated that he does not believe this variance should be approved. Mrs. Kolach commented that she agrees with her husband's comments, especially with the safety of the children.

Ms. Seeley stated that the Building Department received a complaint for a fountain installed in the front yard without a permit. An inspector went to the property and viewed the structure and issued a violation. She noted that if this variance is approved Mr. Maalouf will have to reduce the height of the fountain to eighteen inches in depth per Chapter 1345 Swimming Pools and Water Features.

Law Director Gareau asked if there was a prior fountain. Mr. Kolach, said yes there was a smaller one and now Mr. Maalouf has added the larger base around it. A discussion was held regarding the fountain.

Mr. Patton explained her concerns regarding the safety and also the size of the structure. Mr. Papotto agreed and noted that this is not within the code.

Mr. Rahm moved, seconded by Ms. Patton to approve the following variances, for 22-23014; Fadi Maalouf – 23955 Maple Ridge Rd.

- 1. A variance for an accessory structure (fountain) in the front yard; code does not permit; applicant shows accessory structure (fountain) in front yard. Section 1135.02 (C)(1)**

Motion Denied 4-0.

COMMERCIAL APPEALS AND REQUESTS

22-22960; FASTSIGNS of North Olmsted/ Lorain Crocker Plaza LLC, 28951 Lorain Road

Representative: Redmond Doyle Franchise Partner FASTSIGNS; 24181 Lorain Road.

Proposal of a sign. Property is zoned B-3 General Business, Power Martial Arts,

1. A 11 s.f. variance for Electric sign; code limits the sign area to 5 s.f. total, applicant requests 16 s.f. Section 1163.12.05 (Table 1163.12-1).

Note: According to the ordinance, the building can have 1.0 square feet of sign area per lineal foot of primary façade width and since the building frontage area is 5 lineal feet, so maximum permitted building sign area shall be 5 square feet.

Mr. Doyle explained that Power Martial Arts is an existing business at the Lorain Crocker Plaza. Their landlord is partitioning their unit into a unit on the side of the building and in which they will be moving to the corner unit of the plaza. There is significant square footage however because of the location of the unit they only have five feet of frontage. They will be using their current cabinet which is compliant at their existing location.

Mr. Mackey commented that this is a unique situation given a variance request of five feet of frontage. There was very little discussion on this request.

Mr. Rahm moved, seconded by Ms. Patton to approve the following variances, for 22-22960; FASTSIGNS of North Olmsted/ Lorain Crocker Plaza LLC, 28951 Lorain Road

1. A 11 square foot variance for Electric sign; code limits the sign area to 5 square feet total, applicant requests 16 square feet Section 1163.12.05 (Table 1163.12-1).

Note: According to the ordinance, the building can have 1.0 square feet of sign area per lineal foot of primary façade width and since the building frontage area is 5 lineal feet, so maximum permitted building sign area shall be 5 square feet.

Motion Passed 5-0.

22-22958; FASTSIGNS of North Olmsted/ Lorain Crocker Plaza LLC, 28951 Lorain Road

Representative: Redmond Doyle Franchise Partner FASTSIGNS; 24181 Lorain Road.

Proposal of a sign. Property is zoned B-3 General Business, Any Lab Test Now

1. A 8.83 square foot variance for channel letter sign; code limits the sign area to 15 square feet total, applicant requests 23.83 square feet. Section 1163.12.05 (Table 1163.12-1).

Note: According to the ordinance, the building can have 1.0 square foot of sign area per lineal foot of primary façade width and since the building frontage area is 15 lineal foot, so maximum permitted building sign area shall be 15 square feet.

Mr. Doyle explained that their customer Any Lab Test Now is a new franchise located in the Lorain Crocker Plaza and would like to install a channel lettered sign. He noted that the business must choose a sign format from an approved list provided by the franchisor and this was the smallest option from the list. Mr. Doyle commented that the customer asked for us to pursue a variance request and if they were not approved they would be able to provide documentation to the franchisor.

Mr. Papotto asked if the sign elevation drawing is drawn to scale. Mr. Doyle responded yes. Mr. Papotto commented that from the drawings the sign fits at the location.

Mr. Rahm moved, seconded by Ms. Patton to approve the following variances, 22-22958; FASTSIGNS of North Olmsted/ Lorain Crocker Plaza LLC, 28951 Lorain Road

- 1. A 8.83 square foot variance for channel letter sign; code limits the sign area to 15 square feet total, applicant requests 23.83 square feet. Section 1163.12.05 (Table 1163.12-1).**

Motion Passed 4-0.

22-23021; Joel Copley, Janotta & Herner Inc./KG Real Estate Investments Westside LLC, 25730 Lorain Road, Ken Ganley Hyundai.

Representative: Josh Welfle, AIA Janotta & Herner; 309 Monroe St. Monroeville, Oh
Proposal of adding a new service reception center to the west side of the existing dealership building.

- 1. A 1'-8" variance for the front yard building setback; code limits the front building setback to 75 feet. Section 1139.04. C, Table 1139.04-3, Building Setbacks**

Mr. Welfle explained that they are proposing to renovate the existing dealership and to add a new service reception to the west side of the existing dealership building. The service reception area will be used as a drop facility for cars service. He noted that there is an electrical transformer to the north and also grading issues that they must accommodate, therefore, they are requesting a one foot eight-inch variance. Also, they will be adding a ramp at the rear of the building to accommodate the grading.

Mr. Mackey commented that the addition of the ramp in the back of the building is ideal so cars will not be spilling out onto Lorain Road. The board agreed that this is a minimal request and there are hardships to due to the grading and electrical transformer.

Mr. Rahm moved, seconded by Ms. Patton to approve the following variance for 22-23021; Joel Copley, Janotta & Herner Inc./KG Real Estate Investments Westside LLC, 25730 Lorain Road, Ken Ganley Hyundai;

- 1. A 1'-8" variance for the front yard building setback; code limits the front building setback to 75 feet. Section 1139.04. C, Table 1139.04-3, Building Setbacks**

Motion Passed 4-0.

ADJOURNMENT

For the record Mr. Papotto referenced Enterprise Rent-A-Car case from the September 12, 2022 meeting. He commented that he drove by a new facility at 6:00 AM and the lights were very bright. He stated that adding time conditions to the variance request was the right decision.

A discussion was held regarding when the new board member would be hired. It was the understanding from the board that a member would be elected by this meeting. The board is anxiously awaiting the new member.

With no further business, the meeting adjourned at 8:39 pm.

Bob Papotto, Chairman

Kristine Jones, Administrative Assistant

Approved: _____