

BOARD OF ZONING APPEALS
MEETING MINUTES
APRIL 26, 2012

AGENDA

NEW CASE:

- 1. Trinity Park – Nemeth Residence – Side and Rear Yard Setback Variances**
12-025V
(Approved 4 – 0)
5704 Sandymount Drive
Non-Use (Area) Variance

RECONSIDERATION:

- 2. Wanko Residence – Home Occupation Sign Variance**
12-028V
(Disapproved 4 – 0)
5609 Tuttle Crossing Blvd.
Non-Use (Area) Variance

PRESENTATION:

- 3. 2012 Annual Items of Interest – Transportation Planning in Dublin**

Patrick Todoran called the meeting to order at 6:30 p.m. Other Board members present were James Zitesman, Brett Page, and Brian Gunnoe. Kathy Ferguson was absent. City representatives present were Council Member Cathy Boring, Steve Langworthy, Tina Wawszkiewicz, Jean Ellen Willis, Tori Proehl, and Flora Rogers.

Mr. Todoran welcomed new Board member James Zitesman, who took the Oath of Office at the Board and Commission Member Orientation on April 4th.

Motion and Vote

Patrick Todoran made a motion, seconded by Brian Gunnoe, to accept the documents into the record as presented. The vote was as follows: Mr. Zitesman, yes; Mr. Gunnoe, yes; Mr. Page, yes; and Mr. Todoran, yes. (Approved 4 - 0.)

Council member Cathy Boring made a few remarks regarding the importance of the Board of Zoning Appeals and the responsibilities of the Board position. She then administered the Oath of Office to reappoint Board member Brett Page.

Motion and Vote

Patrick Todoran nominated and made a motion, seconded by Brian Gunnoe, to elect Brett Page as the 2012 – 2013 Chair of the Board of Zoning Appeals. The vote was as follows: Mr. Zitesman, yes; Mr. Page, yes; Mr. Gunnoe, yes; and Mr. Todoran, yes. (Approved 4 - 0.)

Motion and Vote

Patrick Todoran nominated and made a motion, seconded by Brett Page, to elect Kathy Ferguson as the 2012 – 2013 Vice Chair of the Board of Zoning Appeals. The vote was as follows: Mr. Gunnoe, yes; Mr. Zitesman, yes; Mr. Page, yes; and Mr. Todoran, yes. (Approved 4 - 0.)

Motion and Vote

Patrick Todoran made a motion, seconded by Brian Gunnoe, to approve the March 29, 2012 meeting minutes as presented. The vote was as follows: Mr. Page, yes; Mr. Zitesman, yes; Mr. Gunnoe, yes; and Mr. Todoran, yes. (Approved 4 – 0.)

Administrative Business & Communications

Steve Langworthy reported that City Council approved the Bridge Street amendments to the Zoning Code were effective on April 26th, and the Zoning Map will be effective on May 9th. He said although the Bridge Street Zoning Code provisions are now effective, there is no zoning in place yet until the area rezoning for the Bridge Street zoning districts goes into effect. Mr. Langworthy said that Planning has already begun to see development interest and has had discussions with potential applicants.

Mr. Todoran swore in those who wished to address the Board in regard to the cases on the agenda, including applicant Delilah Wanko, Diane Lowery (5625 Tuttle Crossing Boulevard), Ted Nemeth, the representative of applicants, Julius and Mary Nemeth, and City representatives.

1. Trinity Park – Nemeth Residence 5704 Sandymount Drive 12-025V	Side and Rear Yard Setback Variance Non-Use (Area) Variance
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Patrick Todoran introduced this application requesting review and approval of side and rear yard setback variances.

Tori Proehl presented this non-use (area) variance request to construct a fence along the side of the property to connect to an existing fence at the rear of the property. She said the 1.87-acre site is zoned PLR, Planned Low Density Residential District. She said that the proposed fence will be located on the side and rear property lines. She pointed out that there is also an existing nonconforming patio on the site. Ms. Proehl said the development text requires a 30-foot required rear setback, a 25-foot front building setback, and six-foot side yard setbacks with a 10-foot stormwater management easement along the rear property line and a five-foot stormwater management easement along the west property line. There is also a five-foot utility easement along the east property line.

Ms. Proehl explained that if granted, the applicant will be required to obtain an easement encroachment agreement from the City Engineer, as well as a Certificate of Zoning Plan Approval. She reviewed the non-use (area) variance review criteria and noted that Planning recommended disapproval of this non-use (area) variance request because it does not meet the required standards.

Brett Page asked if there were other residences in the City where fences have been permitted on the property lines. Ms. Proehl said she was aware of only one other fence that the Board had approved on the property lines because the applicant's child had special needs.

Mr. Todoran commented that the house behind this one also had a fence on the property line. Ms. Proehl said to Planning's knowledge, that fence was built before 2000 when the Zoning Code fence setback requirements were revised.

Ted Nemeth, 204 Park Boulevard, Worthington, representing the applicants, Julius and Mary Nemeth, explained that his father needed a fence to confine his companion dog to the backyard. He said the fence could be built within the buildable area, if necessary, but it would applying the setback restrictions would make it look more like a dog run and would not be pleasing. He said they chose the proposed fence location for the simplicity of connecting it into their neighbors' fence to the rear that was built on the property line. Mr. Nemeth said they could pull the fence behind some existing pine trees that bound the property on the east and west, and keep a row of arborvitaes along the north property line.

Mr. Nemeth asked if they could pull the fence back to get it inside the pine tree row where it would not be as easily seen, and then construct a new fence along the back of the property instead of using the existing neighbor's fence, bringing the fence inside the line of arborvitae, which would be approximately five to six feet in from the easement.

Ms. Proehl clarified that the required side yard setback was five feet on either side of the house, and there is a 10-foot stormwater easement to the rear of the property line.

Mr. Nemeth asked what the Board might find acceptable.

Mr. Page explained that the Board was not there to tell an applicant what they can do, but to evaluate what was submitted. He said however, since there are two separate variances, one side and one rear yard, the Board could discuss them separately.

Mr. Todoran asked who would maintain the area between the fence and the property line. Mr. Nemeth said it would still be their property, so they would take care of that area.

Mr. Langworthy advised the Board that they could approve a variance that was less than requested.

Mr. Nemeth explained that his original intent was to make it look like the other two neighbors' fences. He said one neighbor's fence was on the property line, and instead of making it look like it was completely different, a solution was to blend it together. He said that they could come into the side yard setbacks and that was not a problem. He said they probably could come in a little further to avoid removing the pine trees on the setback line.

Mr. Langworthy suggested the fence could be attached to the house.

Mr. Page asked how far the rear property line was from the house, and if the house was sitting right on the setback. Ms. Proehl said the house was approximately six feet away from the setback.

Mr. Todoran asked if the fence would be at least six feet from the side property lines if the fence was parallel with the house on both sides of the lot. Mr. Nemeth said it was five feet on the east side and six feet on the west side. He said they could probably draw it in a little more to avoid the pine trees.

Mr. Zitesman said that the applicant's revised proposal still did not meet the review criteria of the Code.

Mr. Nemeth said that the third criterion for the side and rear yard setback variance was met because of the stormwater easement.

Mr. Page asked how the applicant viewed that the special condition criteria was met. Mr. Nemeth explained that his father had mobility issues and often the dog escaped outside before being attached to a chain.

Mr. Langworthy clarified that the criteria speaks to the physical condition of the property, because once the variance is approved, it applies to the property, not the individual who owns the property.

Mr. Page explained that since a similar variance was approved due to the special needs of a child, he was willing to discuss this issue.

Mr. Zitesman pointed out that even if the applicant's new proposal was accepted the standards were not being met.

Mr. Nemeth referred to the second criterion, and said the adverse effect was not present since the fence would not be visible. He said the back yard is well landscaped.

Mr. Gunnoe said if the applicant is moving the fence back five feet with the trees on the site, the third standard would be met. He said the purpose of the setback regulations in place are to preserve visual corridors, because the fence would be behind those plants, but that regarding the special conditions criteria, he agreed with Mr. Zitesman that this criteria has not been met.

Mr. Todoran invited public comments regarding this application. No comments were made.

Mr. Nemeth said in the absence of a motion from a Board member to modify what is listed, he requested a tabling of this application.

Motion and Vote

Patrick Todoran made a motion, seconded by Brett Page, to table the non-use (area) variance at the request of the applicant.

The vote was as follows: Mr. Zitesman, yes; Mr. Gunnoe, yes; Mr. Page, yes; and Mr. Todoran, yes. (Tabled 4 – 0.)

2. Wanko Residence – Home Occupation Variance 12-028V

5609 Tuttle Crossing Blvd. Non-Use (Area) Variance

Mr. Zitesman disclosed for the record that he received a phone call from the applicant in the course of his practice, but they did not discuss the case because of the potential for a conflict of interest. He said he did not perceive it would affect his position on the Board.

Steve Langworthy presented this request for reconsideration of a home occupation variance application. He said that the home occupation regulations stated that no sign is permitted with a home occupation, and noted that another criterion of the home occupation is that there is no change in the outside of the residence in terms of the building or premises. He said that usually refers to a change of the physical structure of the building but could also apply to the sign as well.

Mr. Langworthy said the reconsideration of this request may be allowed by the Director, if new and significant facts or conditions are submitted which might result in a favorable action on resubmittal. Mr. Langworthy said he did not make any judgment as to whether a favorable consideration would be made, and gave the benefit of the doubt when someone asked for reconsideration provided that new evidence was submitted. In this case, the applicant has submitted a specific sign type, the location, and size of which was not done at the first meeting.

He said he thought that was sufficient for reconsideration but that the Board could determine whether the new information would produce a different decision on the request. Mr. Langworthy said that he made it clear to the applicant that simply because reconsideration is allowed it is no guarantee that either Planning or the Board would change their decision from the original application.

Mr. Langworthy presented photographs of the site and surrounding area indicating a number for of non-residential uses in the area. He said there are residential properties across the street, including one vacant structure.

Mr. Langworthy presented a rough depiction of what the proposed four-foot-wide by two-foot- high sign might look like if attached on the porch overhang from the driveway and street, as proposed by the applicant. He said that Planning evaluated this proposal based on the three required review criteria. He said regarding special conditions that there is a future land-use recommendation of commercial on this property, and at some point, the property will be redeveloped to something other than residential, or possibly a mix of residential and commercial. He said, however, that will not happen until Tuttle Crossing

Boulevard is extended west at least to Avery. He pointed out the project is not in the Five-Year CIP for either design or construction, only preliminary engineering.

Mr. Langworthy said while Planning does not believe there will necessarily be adverse effects caused by the sign, the intent and purpose of not allowing home occupations to have signs is to preserve the residential feel and character to the property, so that the operation of a business is not something that will be noticed from the outside. Mr. Langworthy said there are home occupations that operate all over the City and probably many have not had permits issued because they may not be aware a permit was needed.

He said regarding the other set of review criteria, at least two of which must be met, the request is not recurrent in nature, and he could not recall any requests for signs for home occupations, and therefore Planning does not believe a change in regulations is necessary. He stated that there is no impact on the delivery of governmental services. He said, however, based on the previous criteria that all three criteria have to be met, Planning is recommending disapproval of this application.

Delilah Wanko, 5609 Tuttle crossing Blvd. said that she understood that the criteria has not been met and that with a home occupation signs are not permitted to ensure that residential character in that area can be preserved. She said her point was that there is less of a residential character in the area. She said the speed limit is 40 miles per hour on the four-lane highway and a hotel is 300 feet from the house. She said there are not many houses in the area where kids are playing and neighbors are talking to one another. She said it is not a neighborhood but three houses on a very commercial street. Ms. Wanko said she believed that created a different situation. She said on the map, they are zoned residential, but properties for sale are being advertised as retail. She reiterated that the map showed the property as residential, but on the street it was not.

James Zitesman asked when Ms. Wanko signed her lease for the property and how long was the lease. Ms. Wanko said six months ago, she leased the house for seven years, but had only lived in it for three months. Mr. Zitesman said he researched and found that Ms. Wanko previously encountered this problem in another jurisdiction. He asked her if when she leased this property was she alerted and sensitive to this kind of the issue.

Ms. Wanko said she was under the assumption that this property was commercial because the landlord had explained to her that there was surrounding commercial development. She said that she went to the City of Columbus and was told that it was commercial. She said that she found out from Dublin it was residential when she applied for the home occupation permit.

Mr. Todoran invited public comments in regards to this application.

Diane Lowery, 5625 Tuttle Crossing Blvd., said that they built their adjacent home forty years ago. She said that Dublin's projection was that the area will remain as it is for at least five years and in other words, that portion and the northern portion of Tuttle Crossing Boulevard became commercial, unless the residents wished to remain residential, but it could be sold commercially and developed that way. She said they wanted to remain residential.

Ms. Lowery read a letter a neighbor had asked her to present to the Commission:

'Some years ago there were Dublin Boards and Council, and those serving on those at that time showed a great deal of pride and forethought into how this area would be developed, meaning that most southern portion at that time extended-stay that is north of us and diagonal east was under construction and that had gotten to the point where the roof was being abided. Two thirds of the roofing was in place when Dublin decided that they did not like the color that they had approved already. So they had them reverse the entire building, because they cared what it looked like. So Dublin has really looked at this area for a long time and is very particular. And we would like to think that still

remains and would be a concern since so we in the neighborhood asked us to consider their original intent for this area when making your decision.'

Ms. Lowery said that Mr. Geese, owner of the rented house across from them to north, had contacted her. She said that he said he did not want the personality of the neighborhood changed. She said that they plan to live in their home until they died.

Ms. Wanko said she planned to live there until the property was sold for commercial or until the landlord decided to sell it to her.

Mr. Zitesman said he did not think anyone said she should or could not run the business. He said the application was primarily regarding advertising a business. He asked if she had tried other means of advertising, such as a website. He said there were a lot of opportunities to get people to find and know her other than putting a sign on the building.

Ms. Wanko said if it were a business that created a lot of clientele it would make sense to spend a lot of money for advertising in newspapers and the internet, but she only has one or two customers per month. She said that is why she wanted to work from her home.

Mr. Zitesman said that he was skeptical that the sign is a critical part of the business. He said there are many ways to communicate without spending a lot to generate the business. He said while he may not agree that a sign on her home is essential, he encouraged her to explore the other economical options of contacting people. He said he appreciated that she came back with a sign, but she was requesting the Board to approve a variance. He said that the Board still has the criteria that needs to be met in order to grant the variance.

Ms. Wanko pointed out that the review criteria was more intended for buildings, construction, and setbacks. She said regardless of how she worded it, she would not meet the criteria. She said she had been told several times that had never been an application for this type of request, and that was why the criteria was hard to meet. Ms. Wanko said that clients need to know that they are at the right place.

Motion and Vote

Brett Page made a motion, seconded by Patrick Todoran, to disapprove the non-use (area) variance request to allow an eight-square-foot wall sign for a home occupation, because the request does not meet all of the required non-use (area) variance standards.

The vote was as follows: Mr. Zitesman, yes; Mr. Todoran, yes; Mr. Page, yes; and Ms. Newell, yes. (Disapproved 4 – 0.)

3. 2012 Annual Items of Interest – Transportation Planning in Dublin

Jeannie Willis and Tina Wawszkiewicz, PE/Civil Engineers, were there to provide a presentation and discussion regarding transportation planning practices and policies of the City of Dublin, including the integration of bicycle and pedestrian infrastructure, the transportation planning implications of the Bridge Street Corridor, and an overview of other upcoming transportation projects. Following the presentation the Board members expressed their appreciation and interest in the transportation projects in the city.

Mr. Todoran adjourned the meeting at 7:28 p.m.

As approved by the Dublin Board of Zoning Appeals at the May 24, 2012 meeting.