



MEETING MINUTES

Board of Zoning Appeals

Thursday, March 28, 2024

CALL TO ORDER

Mr. Deschler called the meeting to order at 6:30 p.m. He stated that in addition to attending the meeting, the public can access the livestream on the City's website. The City welcomes public participation including public comments on cases. The Chair briefly explained the rules and procedures of the Board of Zoning Appeals (BZA).

ROLL CALL

Board Members present: Jason Deschler, Dan Garvin, Joseph Nigh, Patrick Murphy, Joel Kretz
Staff present: Zachary Hounshell, Bassem Bitar, Daniel Klein
Legal staff present: Yaz Ashrawi

ACCEPTANCE OF DOCUMENTS AND APPROVAL OF MINUTES

Mr. Murphy moved, Mr. Nigh seconded acceptance of the documents into the record and approval of the 02-22-24 regular BZA Meeting minutes.

Vote on the motion: Mr. Kretz, yes; Mr. Nigh, yes; Mr. Garvin, yes; Mr. Deschler, yes; Mr. Murphy, yes.

[Motion carried 5-0.]

The Chair swore in staff and members of the public who planned to address the Board during the meeting.

Mr. Deschler stated that the previously published agenda for tonight's meeting is amended to move Case 24-038V to be heard first.

CASE REVIEW

- **Case 24-038V - Hallinan Residence, Non-Use (Area) Variance**

A Variance to Zoning Code Sections 153.020(C)(2), 153.074(B)(6), 153.190(E)(c), and 153.190(E)(i) for the construction of a single-family home. The 2.01-acre site is zoned R-1, Restricted Suburban Residential District, and is located approximately 300 feet northwest of the intersection of Riverside Drive and Hard Road.

Staff Presentation

Mr. Hounshell stated that the 2.09-acre site is zoned R-1, Restricted Suburban Residential District and is located approximately 300 feet northwest of the intersection of Riverside Drive and Hard Road. The site has frontage along Riverside Drive and the Scioto River located to the west. The site has approximately 60 feet of grade change from Riverside Drive to the Scioto River. The western half of the site is located within the floodplain of the Scioto River and a stream protection zone that surrounds a small stream lies along the northern property line. Development is restricted within those areas. Additionally, the site features a significant amount of mature vegetation throughout the lot. A lot split of 7591 Riverside Drive was approved in 2023, and the second lot was sold to the new property owners, the Hallinan's. Both lots share a private driveway along the southeast corner of the site.

The applicant is requesting variances for construction of a new single-family home. The 1st variance is to permit an approximately 1,500-square-foot detached garage 44 feet forward of the house. Detached accessory structures are required to be located to the side or rear of the principal structure on a residential site. The applicant has stated that this request is due to several site constraints that limit the location of the garage on the site. The 2nd variance request is to permit exposed and unfinished foundation walls along the base of the home. The 3rd variance is to permit no trim or shutters around the windows of the house where they are required for all homes. The latter two requests are to accommodate the architectural design of the home. Staff has reviewed the request against the applicable criteria and recommends approval due to the special conditions of the site, including the natural constraints and narrowness of the site and the Scioto River floodplain and stream protection zone. Of Criteria A, all 3 criteria must be met and staff has found that all 3 are met. Of Criteria B, 2 of 4 criteria must be met, and staff has found that all 4 criteria are met. Therefore, staff recommends approval of the 3 variance requests.

Board Questions for Staff

Mr. Nigh referred to the exposed foundation variance request and inquired if the applicant were to put a concrete wall around a patio at the rear of the house, that would be approved.

Mr. Hounshell responded that this requirement applies to the foundation of the house; it does not consider patios.

Mr. Nigh responded that the applicant indicates that they are using the foundation as part of their patio. If they were to build a section at the rear of the house against the concrete foundation for the purpose of a patio, would it be approved?

Mr. Hounshell responded affirmatively.

Applicant Presentation

Carli Maggio, architect, 2000 S. High Street, Dublin and Will Hallinan, property owner, 7593 Riverside Drive, Dublin introduced themselves.

Ms. Maggio stated that because of the site restrictions, the house must be located up the hill slightly. The detached garage is in front of the home, as they are attempting to provide the homeowners a view of the river. The reason for the variances related to the foundation and lack of trim is that the desire is to create a contemporary architectural style with an elevated appearance.

Board Questions for the Applicant

Mr. Garvin inquired if, aside from the view of the river, there would be any issue with extending a driveway around the house in order to place the garage behind the house.

Ms. Maggio responded that they have maximized the space north-south on the site due to the stream protection zone on one side and the side yard setback on the other. In addition, they are building a wide house to maximize the homeowners' view of the river.

Mr. Deschler inquired if the house were not so large, they would be able to have a garage adjacent to the home.

Ms. Maggio responded that a shorter house would enable that; however, architecturally, it would sacrifice the view for an end wall or sidewall of a garage. The intent is to provide a view of the river from the living room and guest room, as well as the master suite.

Mr. Hallinan stated that it is important to them that the structure be a ranch home as opposed to a 2-story house.

Mr. Deschler inquired if there would be a basement, perhaps with a lower-level walkout.

Ms. Maggio responded that there would be a partial basement and crawlspace beneath the structure.

Mr. Deschler inquired the square footage amount.

Ms. Maggio responded that there would be 3,000SF of finished interior space and 1,500SF of garage and attached suite.

Public Comment

There were no public comments.

Board Discussion

Board members indicated that the variance requests met the required criteria; therefore, they were supportive of approval. Mr. Deschler noted that there is also past precedence for approving variances for homes with site restrictions adjacent to the river.

Mr. Nigh moved, Mr. Murphy seconded approval of the Non-Use (Area) Variance to Zoning Code Section 153.074(B)(6) to allow a Detached Garage To Be Forward of the Primary Dwelling up to approximately 44 Feet.

Vote: Mr. Nigh, yes; Mr. Deschler, yes; Mr. Murphy, yes; Mr. Garvin, yes; Mr. Kretz, yes.
[Motion carried 5-0]

Mr. Nigh moved, Mr. Murphy seconded approval of the Non-Use (Area) Variance to Zoning Code Section 153.190(E)(1)(c) to Allow for Exposed Concrete Foundation Walls.

Vote: Mr. Garvin, yes; Mr. Kretz, yes; Mr. Murphy, yes; Mr. Nigh, yes; Mr. Deschler, yes.
[Motion carried 5-0]

Mr. Nigh moved, Mr. Murphy seconded approval of the Non-Use (Area) Variance to Zoning Code Section 153.190(E)(1)(i) to Allow no Trim or Shutters around the Windows of a Residential Building.

Vote: Mr. Kretz, yes; Mr. Garvin, yes; Mr. Murphy, yes; Mr. Nigh, yes; Mr. Deschler, yes.
[Motion carried 5-0]

- **Case 24-031V - Burns Residence, Non-Use (Area) Variance**

A Variance to Zoning Code Section 153.080(A)(1) and 153.080(B)(1)(a) to allow a fence to be located along the property line. The 0.19-acre site is zoned PLR, Planned Low Density Residential District - Trinity Park, and is located approximately 85 feet southeast of the intersection of Dalymount Drive and Grantham Lane.

Staff Presentation

Mr. Hounshell stated that this site, listed as Lot 68 on the Final Plat, contains a single-family residence with frontage on Dalymount Drive. On November 1, 2023, Planning staff reviewed and provided a disapproval notice for a Certificate of Zoning Plan Approval submitted by the applicant's fence contractor, due to nonconformance with the Code setback requirements. The request was for a new fence that would be located on the side and rear property lines. Between November 1, 2023 and January 24, 2024, the applicant had the disapproved fence constructed on the site without a permit. On January 24, following discovery of the constructed illegal fence, Code Enforcement staff provided a notice of violation for a constructed black aluminum fence. In order to resolve the matter, the property owner was given the opportunity to either submit a variance application for the proposed fence, or revise/remove the fence to avoid legal action. The applicant has decided to proceed with a variance request for the fence. The applicant is requesting 3 variances. The first variance is to allow a fence to encroach into a 10-foot public easement along the southern property line. Within that easement lies a sanitary line that the City owns and maintains. Should the Board approve the variance, the next step would be for the applicant to obtain an easement encroachment agreement with the City Engineer. The second variance request is to allow a fence to be located along a property line. The Trinity Park development text allows for a side yard setback of 6 feet and a rear yard setback of 25% of the lot depth, which for this lot would be 30 feet. The adjacent properties have similar side and rear yard setbacks requirements. The third variance request is to allow a variance from the Trinity Park development text to allow a black aluminum fence. The development text states that fences are required to be wood, stone or masonry construction. He noted that fences that were installed prior to the Fence Code being implemented in 1998 are considered existing non-conforming fences. These fences are permitted to remain on a site, but once replaced, are required to meet the current zoning requirements. The new fence would meet the intent and purpose of that requirement. Additionally, the development text defines the fence materials to establish a specific character in the neighborhood. This new fence would conflict with the original and existing character of the neighborhood's character. He noted that the applicant has provided a statement concerning the variance requests.

Staff has reviewed the application against the applicable criteria and found that in Criteria A, none of the 3 required criteria were met. In Criteria B, the required 2 of 4 criteria are met. Because none of the 3 required criteria in Criteria A were met, staff recommends disapproval.

Board Questions for Staff

Mr. Murphy referred to the fencing regulation from 1998 and inquired if there are existing fences within the Trinity Park neighborhood that may predate that ordinance and would not comply with the current fence regulations.

Mr. Hounshell responded that there are a few properties within the neighborhood that have fences located on the perimeter of the site. His understanding is they predate the current Fence Code. Should those fences be revised or replaced, any new fence would be required to meet the current Fence Code requirements. The City did not regulate fences before 1998.

Mr. Garvin inquired of what materials the existing fences are constructed.

Mr. Hounshell responded that the one or two of which he is aware were constructed of wood.

Mr. Deschler stated the existing fences are grandfathered in. What percentage of a fence must be altered to require the fence to conform to the Fence Code?

Mr. Hounshell responded that he would look up that percentage while the Board's discussion continues.

Mr. Kretz stated that the applicant's narrative mentions an issue with the adjacent property, now a rental property, with tenants having a dog that comes into the applicant's property. In regard to Criteria A-1, would that not be considered a special condition or circumstance? If it is not, what is the reason?

Mr. Hounshell responded that it would not be considered a special condition. We are looking for site-specific conditions, such as narrowness, mature vegetation or natural features that make it challenging for an applicant to comply with Code requirements, in this case, the setback requirements.

Mr. Kretz referred to Criteria A-2. He indicated that he struggles with this one as the reason for the applicant's request for a variance is not that they already have a fence and want to keep it. The request is due to the reason the fence is needed.

Mr. Hounshell responded that staff's conclusion is that the request is to allow the fence to remain in a noncompliant location.

Mr. Nigh inquired if there is a reason the Board needs to know the percentage of fence alteration that would require the fence to conform to Code.

Mr. Hounshell stated that he believes the correct number is that if more than 50% of a fence is replaced, the fence must meet Fence Code requirements.

Mr. Deschler inquired what percent of the applicant's fence is being replaced.

Mr. Hounshell responded that there was no existing fence. The applicant has indicated that there originally was a fence on the site, but it had been removed. Because that earlier fence was constructed prior to fence regulations, the City does not have a permit that describes its construction.

Mr. Nigh inquired if this is a 100% new fence.

Mr. Hounshell responded affirmatively.

Mr. Deschler inquired the number of occasions where an applicant was disapproved by Planning and proceeded to construct a fence or structure.

Mr. Hounshell responded that he does not have a number. Staff may not be aware of instances unless Code Enforcement identifies a violation and relays that information to staff.

Applicant Presentation

Thomas McCash, attorney representative, 55 S. High Street, Suite 210, Dublin stated Section 153.803(c) states, "Notwithstanding any other provisions in this Code, in all residential districts, fences erected prior to the effective date of Ordinance 75-98 shall not be considered nonconforming structures and shall be permitted to be replaced in the same location and at the same or lesser height as existed on the effective date of Ordinance 75-98. In addition, the replacement fence shall be of a material as provided in Section 153.080(c)." Therefore, this fence is not considered nonconforming, and it is allowed to be in the same location on the site as it was before. There is no 50% replacement provision. The other perimeter fences in the subdivision would be permitted to be replaced in the exact same location on the perimeter and not be in violation of the Fence Code. The staff report's statement concerning a replacement fence being nonconforming, and that a replacement fence would need to meet the current Code is not consistent with what the current Fence Code states. Trinity Park was developed in 1992, which was pre-Fence Code. As staff indicated, the zoning is PLR. The City developed many PLRs at that time, and we in essence, wrote the zoning code for those developments. In this particular case, there is actually a provision that was in Ordinance 110-92 that discusses the issue of fences in Trinity Park. This property is actually in Section 2, Phase 1, but the original section was developed in 1992. In the last part of that development text, the text states that other fences within Trinity Park may be of wood, stone or masonry construction, should not be more than 48 inches in height and shall not be located beyond the platted building line. Other fences within Trinity Park may occupy side yards, either behind a line perpendicular to and not more than 4 feet in front of the rear of the house, or to the extent necessary to continue a fence line on the adjoining lot. Therefore, the development text that was approved for this in 1992 specifically allowed fences in the side yards. That is contrary to our current Zoning Code for fences, but it is what was approved with this development text. It is unique to this particular development and may be in some other developments, but in this particular text that was approved by City Council, it allows fences in the side yards. This is a very narrow lot, 70 feet in width. One side has the minimum 6-foot side yard setback. If that had not been addressed in this development text, the current Code would not permit a fence in that side yard. Although an odd layout, the rear of the adjacent house with a dog faces his client's side yard. They do not believe the first criterion is applicable because of the development text. It was necessary to apply for the variance only because of staff's interpretation on the fence permit. In regard to the fence materials, there is at least one other permanent aluminum fence that is installed on Killarney Ct., which is diagonal to this lot. There is also a lot with a temporary black aluminum fence encircling the yard. Behind that is another black aluminum fence similar to his client's. His client reached out to the homeowners association in September, and they indicated they have no objection with the black aluminum fence. They probably would prefer it, as wood boards or split rail fence would have a heavier massing. This fence actually is consistent with the intent to preserve open views and vistas. Therefore, they request the materials variance as it would protect the visual vistas. In regard to the other required criterion, his client's fence contractor applied for a permit but installed the fence while waiting on the permit. His client purchased the property in 1996, pre Fence Code; she understood the development text requirements and installed a fence shortly after moving in. The fence remained until at least 2014. The fence was deteriorating, and she could have replaced it at that time. This fence is installed in the same location as her previous fence. It does not encroach into the 10-foot rear yard easement; it lies at the edge of the easement. The staff report states it is a 7.5-foot easement; it is actually a 10-foot easement. His client's purchase of this property came with certain rights per the development text and restrictive covenants. She is an original property owner and is knowledgeable of the restrictions. She believes applying the Fence Code in her case is applying

an ex post facto law. Should the Board grant the variances for the fence and materials, she is willing to make it a condition that if she moves out, she will remove the fence. However, the new owner probably could request a fence based on the development text that allows it in the side yard. This case is unique in that this is a development that occurred pre Fence Code and pre-PUDs. This development text was written to specifically include fences, similar to the Muirfield development text which specifically excludes fences.

Board Questions for the Applicant

Mr. Kretz requested clarification of the issue of having the fence permit rejected and installing the fence, nevertheless. As presented, it seems the contractor proceeded to install it without the permit. What is the timeline from permit request to fence installation?

Mr. McCash responded that the permit disapproval was received in November, but the fence already was installed. The homeowner considers the fence a replacement of her previous fence. The citation was received in January, because unfortunately, Code Enforcement considered it a new fence.

Darla Burns, property owner, 5763 Dalymount Drive, Dublin, stated the permit disapproval was received November 1, but the fence was already installed.

Mr. Kretz inquired if the disapproval was received first and then the fence was built, or did the fence installation begin at the same time the permit application was submitted.

Ms. Burns responded that it was simultaneous.

Mr. Kretz inquired if the fence is in the same location as the previous fence.

Ms. Burns responded that it is except the previous fence extended to the rear yard easement. The current fence does not.

Mr. McCash noted that the current location of the fence addresses staff's indication that the fence is in the easement; it is not in the easement.

Mr. Deschler stated that the metal material is not included in the development text list of permitted fence materials. Should a request regarding the building material be submitted to a different forum?

Mr. Ashrawi responded that a one-off variance permitting a material that is not currently permitted can be done through a variance process.

Mr. Deschler inquired if the Board of Zoning Appeals has the authority to modify the development text.

Mr. Ashrawi that it can be handled through a variance process.

Mr. Garvin inquired if the original fence was removed 10 years ago and if it met the material requirements.

Ms. Burns responded that the fence was removed 9 years ago. It was comprised of wood and wire mesh. She had issues with the mesh coming off and eventually with the wood rotting, so she looked for a maintenance free material for the replacement fence. When she purchased the home, the only fence materials specifically prohibited were chain link and vinyl.

Mr. McCash clarified that when she purchased the home, Ms. Burns received a summary of the restrictive covenants, which states that other materials need to be approved by the homeowners association (HOA). In September, while she was receiving quotes for the work, she reached out

to the HOA, who indicated they had no objection to the material, but she would need to talk to the City about the request.

Mr. Garvin requested clarification of the reference to 7 feet from the rear easement and the 25% requirement. Is that a percentage of the total property from the front property line or from the house footprint?

Mr. Hounshell responded that he is referencing two separate items. There is the easement that is shown on the plat for the development and for this site. That is 10 feet. The rear setback, which is determined by the development text, is 25% of the depth of the lot. The rear setback for this lot is 30 feet, which is different than the easement.

Mr. Garvin inquired if Code supersedes development text.

Mr. Hounshell responded that Section 153.083(b) states that if these standards conflict in any way with the standards in any planned development zoning text, then the most restrictive standard shall prevail. We would apply the Fence Code setbacks to the fence.

Mr. Kretz requested Mr. Ashrawi to comment on the section of the Code related to replacement fence to which the applicant referred, which was not in the meeting materials.

Mr. Ashrawi responded that is Section 153.083(c), notwithstanding other provisions in all residential districts, fences erected prior to the effective date of Ordinance 75-98, which was March 20, 2000, shall not be considered nonconforming structures and shall be permitted to be replaced in the same location and the same or lesser height as existed on that effective date. He believes that Section 153.083(b) comes into play there. When there is a conflict in the standards of the Code and a development text, the more restrictive one stands.

Mr. McCash stated that the last sentence of the development text paragraph states that, "other fences within Trinity Park may occupy required side yards either behind a line perpendicular to and not more than 4 feet in front of the rear of the house."

Mr. Hounshell stated that addresses only the side yard setback, not the rear yard setback. It was staff's understanding that the fence was in the easement, but if it is not, that is good. However, it is within the rear setback.

Mr. Kretz inquired if the Trinity Park development text is the more restrictive text, this would be a moot point.

Mr. Ashrawi responded that if the fence existed exactly or close to what now exists, applying the development text would be the more restrictive in regard to side yard and rear yard setbacks and the material.

Mr. McCash stated that his client considers this a replacement fence and has located it out of the easement, although the original fence was in the easement.

Mr. Garvin inquired if the fence replacement provision provides a timeframe for replacements.

Mr. Hounshell responded that provision does not define a timeframe. There are provisions based on maintenance that state, "any maintenance that requires more than 10% of the surface area of an existing fence that has nonconforming materials within a a 12-month period shall require reconstruction of the entire fence with the material permitted." However, his understanding is that is not applicable to this situation, because the fence has been gone for several years.

Mr. Deschler stated that his question is if the fence is considered a replacement. He inquired if staff considers it a new fence, not a replacement.

Mr. Hounshell responded affirmatively.

Mr. Deschler inquired if the Board is permitted to make its own determination in regard to whether the fence could be considered a replacement. That would alter how this request would be judged. Mr. Hounshell responded that his understanding is that would be an appeal of how the Code section is interpreted.

Mr. Deschler inquired if that would require submission of a different application.

Mr. McCash responded that could be considered an administrative review.

Mr. Deschler pointed out that the variance request submitted was not for a replacement fence, but for a new fence.

Mr. Ashrawi responded affirmatively. However, the Board can make its decision based on the specific evidence before them.

Mr. McCash stated that your question is whether you should presume the staff to be correct in the information presented. In a quasi-judicial proceeding, the Board has the ability to weigh staff's information and the applicant's information and make a decision.

Mr. Deschler stated that he wants to ensure that the Board is judging the request against the appropriate standard. He inquired if staff discussed with the applicant's counsel replacement versus new.

Mr. Hounshell responded that staff did not have those discussions.

Mr. Deschler inquired if the Board is able to make a decision as to whether the Board considers the fence a replacement or a new fence. If so, would that require a re-application in some form?

Mr. Ashrawi responded that the Board is authorized to weigh all the evidence before it. It is not limited by the application submitted. It is limited by the evidence before it as to whether this is a new or replacement fence. The application was for a new fence requiring a variance. The discussions concerning this being a replacement fence were not posed prior to tonight.

Mr. Deschler inquired if there is precedent for cases submitted based on the timing of when a fence is considered replacement or new.

Mr. Hounshell responded that he is not aware of any cases.

Mr. Deschler stated that the Board needs to decide whether they will consider this a new or replacement fence.

Mr. McCash stated that the applicant's narrative contains a project narrative that does state that the applicant desires the re-installing of a fence in the same location as the previously permitted fence. The applicant did address that.

Mr. Deschler responded that the issue is that there were close to 10 years where no fence existed, so should the fence be considered new or a replacement. Typically, people replace items in a somewhat immediate fashion.

Mr. Nigh inquired if the applicant's position is that it could be an infinite amount of time in which a fence could be installed and considered a replacement.

Mr. McCash responded that if it was the original property owner with this development text, yes. If it was a new property owner, probably not. With this case, we are talking about the original owner who purchased the property pre Fence Code. There are probably very few similar cases within the City.

Mr. Nigh stated that his understanding is that Ms. Burns did not replace the fence in the same location.

Mr. McCash responded that the original fence was installed at the perimeter of the property; however, because she realized there was an easement at the rear of the property, she located it forward of that.

Mr. Nigh stated that to him, this would not be a replacement fence nearly 10 years later with a different material and different location.

Mr. Kretz inquired what is the higher burden of proof on which the Board should focus – the applicant proving that it is a replacement, or the City proving that it is not.

Mr. Ashrawi responded that in an administrative hearing, it is the preponderance of the evidence standard. In this case, he would say the burden is on the applicant, since they are putting the application forward, and they are the original property owner. He is not sure the City has any evidence regarding the original fence, other than what has been heard in this meeting. The indication is that there has not been a fence on the property for approximately 10 years, and whether a new fence would be considered a replacement is a legal interpretation for the Board to make. If there has been a fence on the property more recently than 10 years, the applicant can address that.

Mr. McCash stated that in 1998, a fence permit to install a fence would not have been required, because it predated the Code.

Mr. Hounshell responded affirmatively.

Mr. Kretz stated that he does not believe there is sufficient evidence that this should be considered a replacement fence. Therefore, the Board would consider the variances for a new fence.

Mr. Deschler inquired if, based on the Code, a new fence would be permitted.

Mr. Hounshell responded that fences would be permitted in this neighborhood and would be subject to the Trinity Park development text. Staff would evaluate the proposed fence per the stricter of the two, development text and Code. The development text is stricter concerning the building materials; City Code is stricter concerning the location.

Mr. Nigh inquired how far back the Dubscovery database reaches.

Mr. Hounshell responded that Dubscovery has aeriols from 2005. During tonight's discussion, he has checked Dubscovery, and there is evidence of a fence in 2015, but not in 2016.

Mr. Garvin stated that because the new fence is a different material, in a different location and there is a significant gap in the timeline, he does not view it as a replacement. Although Mr. McCash indicates a variance is not needed, the Board is considering the variance requests before it.

Mr. McCash stated that the variance into the encroachment is not needed, since the fence is outside of the easement. They did not request that variance; staff added it.

Mr. Hounshell concurred. If the fence is outside of the required 10 feet, the variance for encroachment into the easement is not required. They would need a variance for the rear yard setback.

Mr. Deschler inquired if Ms. Burns signed a contract with the fence installation company. If so, did the contract detail obligations that the fence contractor would need to contact the City for approval.

Ms. Burns responded that he indicated he would contact the City; she believed he submitted a building permit request. She contacted the HOA and they had no concerns with the fence.

Mr. Deschler inquired if the contractor notified her that the fence permit was denied.

Ms. Burns responded that she believed it was in error, since the fence was being placed in the same location as her original fence. The development text specifies only that no chain link and no vinyl are permitted.

Mr. Deschler inquired if she authorized the contractor to proceed with the knowledge that the permit had been denied by the City.

Ms. Burns responded that she did, as it needed to be installed before the new renters moved in next door. There have been a series of renters in that house, and most have had dogs. The previous renter never cleaned up after their dog, which always came into her yard. She has spoken with the neighbors, but it has been ineffectual.

Mr. Nigh inquired if she contacted her HOA about the issue with the renter's dog coming onto her property.

Ms. Burns responded that she did not file a complaint. There is no legal requirement that owners must fence in their dogs.

Mr. Nigh stated that there is a legal requirement for dogs to be on a leash in the City of Dublin.

Mr. McCash stated that Ohio is a fence-in state as opposed to a fence-out state. However, his client is attempting to fence out the dog as it is less restrictive than an action engendering a neighbor dispute. She will remove the fence when she moves.

Mr. Nigh stated that all of the lots are 70 ft. x 120 ft., so this property is not unique.

Mr. Kretz stated that Criteria A-2 states that the variance is not necessitated because of any action or inaction of the applicant. Why does the applicant believe a variance is necessary?

Ms. Burns responded that the Notice of Violation she received from the City stated that she could request a variance, but within a certain timeframe.

Public Comment

There were no public comments.

Board Discussion

Mr. Kretz stated that part of his decision is based on the applicant's response that they received a Notice of Violation from the City because they did something. Additionally, it would be difficult to approve a variance for the black aluminum as the development text does not permit it.

Mr. Deschler stated that there is still a need for a variance for the setback, both side yard and rear yard setbacks.

Mr. Garvin stated that he is inclined to review the variances requested, and he believes the variance does not meet criterion 2, since the Board is hearing a variance request as a result of the applicant's action, i.e. installation of the fence. He does believe there is a special condition. Additionally the timeframe is an issue.

Mr. Murphy stated that he is not able to consider the fence a replacement fence. Nor does the fence meet the Fence Code. There should be a solution to keep the dog out of her yard, but it would need to meet regulations.

Mr. Nigh concurred with fellow members' comments.

Ms. Burns stated that she has a 6-foot sideyard, and the Fence Code regulation would require her to allow 5 feet of it to be used by her neighbor and only 1 foot would be within her control.

Mr. Deschler stated that there are options available to keep the neighbor's dog out of her yard. He inquired if the applicant wished the Board to proceed with a vote.

Mr. McCash requested a clarification. If the other property owners with perimeter fences in this development need to replace a split rail fence with a split rail fence in exactly the same location, would they not be allowed to do that?

Mr. Hounshell responded that any fence that is not meeting the current Fence Code requirements, if replaced, the new fence would need to comply with the current zoning standards. The most strict standard applies.

Mr. McCash stated that per staff's interpretation, they are negating Section 153.083(c) in its entirety; the language is specific that the fence can be replaced in the exact same location. There are approximately 10 fences within this neighborhood that are perimeter fences. The indication is that his client does not have that right, because her fence was down for 9 years.

Mr. Ashrawi responded that the other fences would be replacements. This would be considered on a case-by-case basis. To not apply the more stringent standard would then ignore sub-section (b). He does not believe the City has had a similar situation, however, and he has not had time to consider it further. He believes the other fences would more likely be considered a replacement than what is before the Board tonight.

Mr. McCash stated that there are other property owners who have the right to replace their fences, but she is denied the right because her original fence has been down for 9 years.

Mr. Kretz clarified that the main reason he is not supportive of the variances is due to Criteria A-2. When asked the reason for requesting the variance, the applicant's responded that it was due to receipt of the letter of violation. His intent is not to deny any other property owners their rights.

Mr. Deschler stated that the applicant can proceed with the vote or request the case be tabled to allow them to work with Planning staff to identify a way to obtain the desired fence.

Mr. McCash responded that his client would like to have a vote. To clarify, the only reason his client applied for the variance was that the letter of violation told her that she had to apply for the variance.

Mr. Deschler moved, Mr. Murphy seconded approval of the Non-Use (Area) Variance to Zoning Code Sections 153.080(A)(1) to allow a fence to encroach into a 7.5-foot easement along the southern property line.

Vote: Mr. Kretz, no; Mr. Garvin, no; Mr. Murphy, no; Mr. Nigh, no; Mr. Deschler, no.
[Motion failed 0-5]

Mr. Deschler moved, Mr. Garvin seconded approval of the Non-Use (Area) Variance to Zoning Code Sections 153.080(B)(1)(A) to allow a fence to be located along the property line.

Vote: Mr. Kretz, no; Mr. Garvin, no; Mr. Murphy, no; Mr. Nigh, no; Mr. Deschler, no.
[Motion failed 0-5]

Mr. Deschler moved, Mr. Garvin seconded approval the Non-Use (Area) Variance to the Trinity Park Development Text to allow a black aluminum fence.

Vote: Mr. Nigh, no; Mr. Murphy, no; Mr. Garvin, no; Mr. Kretz, no; Mr. Deschler, no.
[Motion failed 0-5]

- **Case 24-037V - Daniels Residence, Non-Use (Area) Variance**

A Variance to Zoning Code Sections 153.080(A) and 153.080(B)(2) to allow a solid fence to be 10 feet in height and located in the side yard. The 1.28-acre site is zoned R-1, Restricted Suburban Residential District, and is located at the northwest end of Trails End Drive.

Staff Presentation

Mr. Klein stated that the subject site borders Liberty Township to the north and the Wedgewood Glen neighborhood to the west. The site abuts single-family lots to the north and west, and another large, single-family lot to the south. The applicant is requesting a Non-Use (Area) Variance to Zoning Code Sections 153.080(A) and 153.080(B)(2) to allow a 10-foot tall solid fence in a side yard. The proposed solid fence is 25 feet wide, and is intended as a "wall extension" to provide privacy for the existing asphalt drive and potential future deck and patio. The fence would be flush with the northern wall of the existing detached garage structure and match the color of the structure. This fence would meet the side yard setback requirement of 8 feet. Staff has reviewed the application against the applicable criteria and determined that in Criteria A, none of the 3 required criteria are met:

Criteria 1 – Special Conditions - No elements of the site prevent the applicant from having a Code-compliant fence.

Criteria 2 – Due to Action/Inaction of the Applicant - The variance is necessitated by the applicant due to an intended future improvement.

Criteria 3 – Will not cause an adverse effect - Fence regulations are intended in part for the improvement of the visual environment. This includes the provision of a neat and orderly appearance consistent with the neighborhood and community. This request would deviate from that provision.

In Criteria B, 2 of the 4 criteria are required to be met and are met. However, because none of the criteria in A are met, staff recommends disapproval of the variance requests.

Board Questions

Mr. Garvin inquired if no height variance is needed for the solid fence at the rear of the yard.

Mr. Klein responded affirmatively.

Mr. Hounshell noted that solid fences are permitted in the rear yard. Additionally, they are allowed only around a patio or deck as a privacy fence.

Mr. Garvin inquired if it would need to enclose a physical structure, concrete or wood.

Mr. Klein responded that it would have to be elevated to be considered a deck area. Even then, it is not in the rear of the yard, so it would not be permitted.

Mr. Kretz stated that staff has indicated Criteria A-2 is not met, but it appears that we are punishing the applicant for asking permission before proceeding with the project. He does not see what they did or did not do that caused the need for a variance. Why does a future space, which is not something they have already done, disqualify them from Criteria A-2?

Mr. Hounshell responded that the basis is their intent, as described in their narrative.

Mr. Deschler stated that in #4 of the applicant's statement, they indicate that they created the need for additional privacy by removing a significant amount of a mature wooded area.

Mr. Garvin inquired if there was thick vegetation that blocked the sight lines of a fence, it would be considered a Special Condition.

Mr. Klein responded affirmatively, as it would be site specific.

Mr. Garvin inquired if the vegetation in the photo shown is the vegetation that was removed necessitating the privacy fence.

Mr. Klein responded affirmatively.

Applicant Presentation

Rob Daniels and Cheryl Daniels, 843 Long Trails End, Dublin introduced themselves.

Mr. Daniels stated that they moved into the house in 2010. The adjacent residential neighborhood was built 5 years later. In 2023, they constructed a detached garage. The intention was to build it forward of the home, but Code did not permit that; consequently, it was built to the rear. They had intended to build a detached structure to the front and another detached structure to the rear and connect them with a solid wall, essentially creating a wall on the north side of the lot that matched the height of the detached structures. Later, they learned that Code did not permit them to build the structure forward of the house, so they built only one. They would like to extend a solid fence from the new garage, creating a privacy wall. They have applied for a permit for the deck and patio at the rear of the home, and have zoning approval but not yet Planning approval. In regard to special conditions of the site, their northern property line is located on the edge of Washington Township between Franklin and Delaware counties. The homes adjacent to their side yard do not lie within Dublin, Washington Township or Franklin County. The elevation of those homes is 6 feet higher than theirs. If they were to build only a 4-foot fence, the top of the fence would be 2 feet lower than the bottom of those homes. They have requested permission to build a 10-ft. fence in order to gain some privacy. Solid wall fences are permitted only in rear yards. They have dense, mature vegetation at the rear, and building the fence at the rear would require significant clearing of the vegetation, whereas extending the fence from the existing structure requires no additional clearing. Therefore, they believe their site meets criterion 1, Special Conditions. In regard to criterion 2, although he did remove extensive vegetation, the homes that were built later were what necessitated the need for a variance. In criterion 3, the wall will not have an adverse effect on the property within the vicinity. In regard to a neat and orderly appearance, their intent is to match the wall height and paint color of the garage. However, this wall will not be seen from any other Dublin residence. The only homes from which it could be seen lie within Delaware County. He noted that the neighbor across the street has a 12-foot fence on the same property line, although it was built prior to 1998. It is 100-150 feet long and transitions from 6-foot to 12-foot.

Board Questions for the Applicant

Mr. Kretz inquired if the homes from which he is seeking privacy were built before or after he cleared the trees.

Mr. Daniels responded that they were built before, but a 20-foot depth of trees remains. When the trees are full of leaves, there is no issue; when the trees are bare, they need the privacy fence.

Mr. Nigh inquired if where the trees were removed, there would be ability to install some evergreens or arborvitae to provide year-round screening.

Mr. Daniels clarified that the fencing enclosing the backyard is actually 4-foot aluminum fencing. His request is for what would be the only section of cedar fencing. In regard to arborvitae, it is necessary to leave space between them to grow. There is a path along their property line next to the new detached structure that they cleared to provide access to their utilities. Installing arborvitae would decrease the access width.

Mr. Nigh stated that his question is if a row of arborvitae could replace the proposed fence, as it would allow the same clearance.

Mr. Daniels responded that when the arborvitae mature, it would reduce the width of the access to the utilities.

Mr. Deschler responded that to the left of the garage, there appears to be a large clear path behind the garage.

Mr. Daniels responded that it would be fenced in by the aluminum fence, which will be gated and locked.

Mr. Deschler inquired if a gate access could be provided to the utilities area.

Mr. Daniels responded that there will be gates, but they do not want utility people coming in their backyard.

Mr. Murphy inquired how he arrived at the 10-foot height.

Mr. Daniels responded that it matches the height of the garage wall; the height of the garage door is 9 feet. They would be satisfied with either height. Their goal was uniformity with the structure to which it will be connected.

Mr. Nigh inquired if they had not built the garage or removed the vegetation, they would need the fence. It seems the location of the garage is what created the situation.

Mr. Daniels responded that if they had not built a garage, they still would have wanted a privacy fence.

Mr. Deschler inquired if it could be considered a special condition to be located at the end of a county or township.

Mr. Hounshell responded that he is not aware of any previous variances due to adjacency to another jurisdiction.

Mr. Deschler stated that the home is at the end of a road with a different subdivision next to it.

Mr. Hounshell responded that the subdivision was built per regulations different than those of the City of Dublin.

Mr. Deschler inquired if the Board had ever considered it to be a special condition for a property within the Dublin jurisdiction to abut a property within a different jurisdiction.

Mr. Hounshell responded that he is not aware of any such variances granted.

Public Comment

Shain and Renee Buerk, 8401 Trails End Drive, Dublin:

"We write to you today in advance of the upcoming BZA meeting of March 28 regarding the proposal for the Daniels Residence at 8431 Trails End Drive in order to voice our support for the requested fence approval. As the owners of the residential property immediately adjacent to the property identified, we are located at 8401 Trails End Drive, which is immediately to the south of the Daniels home. We have reviewed the proposal and consider this requested fence to be in keeping with the aesthetic standard for both the Trails End community and the City of Dublin and encourage the Board to approve the request. We know the Board's duty is to exercise good

judgment and to thoughtfully preserve the building codes, but in our opinion, an exception seems warranted. Please consider this message as our unsolicited endorsement of the proposal.”

Board Discussion

Mr. Garvin stated that he actually disagrees with staff in each criterion in Criteria A. In regard to criterion 1, he considers the two bordering properties that lie within jurisdictions with different development requirements to be a special condition. In regard to criterion 2, he does not believe the variance is necessitated as a result of the applicant’s action. It is necessitated by the need for privacy from the Liberty Township homes built within the sight lines of their home. In regard to criterion 3, he does not believe the fence would cause substantial adverse effect on the surrounding Dublin properties. He agrees that the applicant has met the required 2 of 4 criteria in Criteria B.

Mr. Nigh stated that the other homes were built after they purchased their home. Is his position that any homeowner who has a home built adjacent to them would meet criterion 2 in Criteria A? Mr. Garvin responded it would not be “any” home, but a home built with a different development code than the City of Dublin’s.

Mr. Nigh inquired what is different in the other jurisdiction’s code.

Mr. Garvin stated that his point is that the houses now there are not due to the applicant’s action. Mr. Nigh responded that the applicant was aware when he moved in that a different jurisdiction bordered the property.

Mr. Garvin responded that the new houses, however, are not a result of their action.

Mr. Nigh responded that the applicant is asking for a variance because they want privacy. There was another way to have achieved privacy. When he asked the applicant if he had not put the garage where he did, this fence would be needed, he responded that he would have wanted it, but he would not have needed it. To him, their action of putting the garage where it is and cutting all those trees down is what necessitates this. The new homes are not due to the applicant’s action but removing the tree screen is.

Mr. Garvin responded that he does not believe the trees achieved sufficient privacy. Actually, the garage probably added more privacy.

Mr. Kretz stated that he could see both positions for criterion 1 under Criteria A. However, with the first case reviewed tonight, we determined that the site was a special condition that needed the open concrete look. That was probably a “gray” area, however, and he believes this site is similarly “gray” as far as being a special condition. On criterion 2, he believes the applicant is saying they have always wanted privacy and have attempted to achieve that with the garage and now the fence, if approved. He agrees with Mr. Nigh that they could achieve privacy through other means. For criterion 3 under Criteria A, staff has indicated that the fence would not cause a “substantial” adverse effect. That word matters to him, so he would not say that criterion is not met. Although criterion 2 is less clear, he is leaning toward approval of the variances.

Mr. Murphy stated that his decision hinges on criterion 2, as well, i.e. Applicant Action/Inaction necessitating the variance. It would depend on whether he would achieve a better privacy result by putting up the fence than he would have maintained by not removing the vegetation and adding the new structure. If the goal is to achieve privacy from the height and size of the surrounding homes built subsequent to their home purchase, that privacy might not have been achieved by the vegetation. The question also would be what other alternatives exist to attain that level of privacy. Installation of trees could be an alternative, but installing a 10-ft. fence would be a quicker

solution. He also is leaning toward a decision that the need for a variance is not due to the applicant's action/inaction.

Mr. Nigh stated that the applicant's reason is a desire for privacy. Is there any homeowner in Dublin who does not have a place where they would like to have a 10-ft. fence to improve privacy? He believes that would apply to every resident in Dublin. For instance, his neighbor has a 2-story home and a 4-foot fence does not prevent them from seeing into his property. He is concerned about creating a precedent to approve a variance to prevent neighbors from seeing into a property.

Mr. Ashrawi responded that it would not establish a precedent, as every property and situation is unique in land use variance cases. It could set a trend, perhaps, but it would not be binding.

Mr. Nigh stated that if the next applicant states they need the privacy, the Board can refuse to grant a variance permitting it, although we approved this one – that is a struggle for him.

Mr. Ashrawi responded that if the decision depends on that criterion alone, it would be difficult. However, each case needs to be considered holistically.

Mr. Kretz pointed out that criterion 3 affords some protection from setting a precedent. Typically, installing a 10-ft. wall within a standard neighborhood would cause an adverse effect to other properties within the vicinity.

Mr. Garvin stated that he attempted to evaluate each criterion separately, considering how it might apply to similar cases.

Mr. Deschler stated that per Code, a special condition can be the use or development of the property immediately adjoining the property in question. He does not believe "another house" can be considered the development of the property, as that could apply everywhere. Unfortunately, we do not have to be concerned about that, as within the definition of special conditions, it states that "conditions and circumstances exist that are peculiar to the land or structure involved, which are not applicable to other lands or structures within the same zoning district. The adjacent homes are not in the same zoning district, so there is no special condition. Therefore, he cannot get past that criterion.

Mr. Garvin inquired if that verbiage is stating that if the situation does not apply to any other property in the same zoning as this property.

Mr. Kretz stated that he reads it as, "special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands and structures within the same zoning district."

Mr. Ashrawi stated that as he reads it, the Board is comparing this land or structure to others within the district in which the homeowner's property lies. Does this property have a special condition because of the adjoining properties, as compared to others within this same district?

Mr. Nigh inquired if that refers to a special condition such as a river, which other properties might not have; it would not be another house.

Mr. Ashrawi responded that it does say by reason of the use or development of the property immediately adjoining the property in question. If the use is different than the other properties within the zoning in which this property lies, that could be considered a special condition.

Mr. Deschler stated that in regard to the privacy aspect, he does not think the use and development of the property immediately adjoining the property in question means that if someone builds another house next to the property, that automatically serves as a special

condition. That could be any structure, even an accessory structure, and it could be the use thereof. We need to be careful of how this will be interpreted moving forward.

Mr. Garvin stated that it would be based on the other house be subject to different development regulations.

Mr. Deschler responded that they might not be different.

Mr. Kretz stated that for him, it is the privacy aspect. The neighboring houses are large and tall. That factor might be considered for future cases, as well. It is difficult to quantify how much privacy is sufficient.

Mr. Murphy stated that he assumes when the property owner purchased this site, the adjacent properties were not there. There was a thick, wooded area. The property was purchased due to the level of privacy that existed. The homeowner is interested in retaining that in some way. The intervening structures that were developed compromised that, which was not within the applicant's control. The property owner is attempting to replace the spirit of the property that was purchased. By building the structure, the applicant was finding an expedited way of retaining that level of privacy that would have existed if the vegetation had not been removed. Therefore, he is leaning towards approval.

Mr. Deschler stated that he does not believe the applicant met the first two criteria in A. It is not only that there is no special condition, but it was also the property owner's action that caused the need for a fence.

Mr. Kretz moved, Mr. Garvin seconded approval of a Non-Use (Area) Variance to Zoning Code Section 153.080(A) to allow a fence to exceed four feet in height.

Vote: Mr. Nigh, no; Mr. Deschler, no; Mr. Murphy, yes; Mr. Garvin, yes; Mr. Kretz, yes.
[Motion carried 3-2]

Mr. Kretz moved, Mr. Garvin seconded approval of a Non-Use (Area) Variance to Zoning Code Section 153.080(B) to allow a solid fence to be built within a side yard.

Vote: Mr. Murphy, yes; Mr. Nigh, no; Mr. Deschler, no; Mr. Garvin, yes; Mr. Kretz, yes.
[Motion carried 3-2]

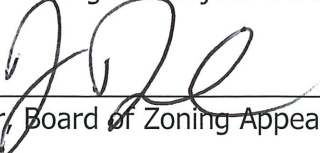
COMMUNICATIONS

Board members were reminded of the following:

- There will be an Envision Dublin Community Plan Public Meeting, Tuesday, April 2, 2024, 5:00-7:00 pm in Council Chamber.
- The next regular BZA meeting is scheduled Thursday, April 25, 2024.

ADJOURNMENT

The meeting was adjourned at 9:20 p.m.



Chair, Board of Zoning Appeals



Assistant Clerk of Council