



**BOARD OF ZONING APPEALS
MEETING MINUTES
MAY 5, 2022**

I) CALL TO ORDER/ROLL CALL

Chairman Jim Hrivnak called the Board of Zoning Appeals meeting to order at 6:30 p.m. Board members present included: Jim Hrivnak, Randy Duncan, Janice Hitzeman, and Ryan Brickner. Gregory Short was absent. Staff present were: Claudia Husak, Planning Director; Elise Schellin, Development Planner, and Pam Friend, Administrative Assistant.

II) APPROVAL OF MEETING MINUTES

April 7, 2022 Meeting Minutes
[04072022_bza_draft_min.pdf](#)

MOTION: Janice Hitzeman moved to approve the Board of Zoning Appeals meeting minutes of April 7, 2022. Ryan Brickner seconded the motion. Chairman Hrivnak requested a roll call for passage: Randy Duncan, abstain; Janice Hitzeman, yes; Ryan Brickner, yes; and Jim Hrivnak, yes.

VOTE: Y 3 N 0 (None) AB 1 (Randy Duncan)

Motion passed 3-0-1.

Meeting minutes of April 7, 2022, approved.

III) HEARING OF VISITORS FOR ITEMS NOT ON AGENDA

Chairman Hrivnak opened the floor for visitors to address the Board with issues not on the agenda for this evening. Hearing none, Chairman Hrivnak closed this portion of the meeting.

IV) NEW CASES

CASE 2022-08V

Applicant: CV Properties, LLC - Attn: Chris Vince
Location: Parcel #31923001003000, NW corner of Steitz Rd and Home Rd
Zoning: PC - Planned Commercial District
Request: Review and approval of a variance to code section 1143.15(a) to reduce the required street frontage from 160 feet to 0 feet, and to reduce the required minimum side yard setback from 25 feet to 6.5 feet.

[Case2022-08V_MiddleburyCrossing_StaffReport.pdf](#)
[Middlebury Crossing Variance Application.pdf](#)

Development Planner Schellin gave the Staff Report. She advised Staff was recommending approval to Variance of Code Section 1143.15A, to reduce their required street frontage from 160 feet to 0 feet and to reduce required minimum side yard set-back from 25 feet to 6.5 feet. She also advised, if approved by the Board this evening, the variance would then need to go back to the Planning and Zoning Commission for their review and approval as an application for a subdivision without plat.

Board Member Brickner asked what directions were the frontage and the side. Development Planner Schellin advised the residential parcel would not have frontage.

Board Member Hitzeman asked if it was presented to Planning and Zoning Commission originally without the lot split. Development Planner Schellin stated essentially in the Final Development Plan, it was not called out as a proposed property line split.

Chairman Hrivnak called upon the applicant for testimony. He then swore him in.

Chris Vince, 110 Polaris Parkway, Westerville, Ohio, gave his presentation.

Chairman Hrivnak asked if Mr. Vince could give a little more explanation on the side yard setback from 25 feet to 6.5 feet and he wondered if that was a parking lot or garages. Mr. Vince advised they are garages for the apartments and the rear of the garages would be facing south toward the retail center. There are parking spaces on the retail side.

Planning Director Husak advised the retail parking spaces are adjacent to the back of the garages.

Mr. Vince stated there are no changes on this plan, just the lot split, for the sake of financing.

Board Member Hitzeman said Mr. Vince mentioned it would make it easier to sell as separate lots, and she wondered if there were any offers or any pending sale.

Mr. Vince advised there have been multiple offers, but have not accepted any. Their intention is to build it out.

Board Member Hitzeman asked when the original plan was submitted to the Planning and Zoning Commission, was the lot split intended to be in that plan or is this something that was post that approval.

Mr. Vince stated it was contemplated. When it was originally zoned, we weren't sure if we were going to be building right of way, or selling off pieces, but the intent was there to split the lot in the future.

Chairman Hrivnak opened the floor for public comment on Case 2022-08V.

Chairman Hrivnak swore the citizen in.

Nicholas Sanderson – 4320 Home Road, which is the property that borders the entire west part of the lot. Mr. Sanderson stated his only concern was with the language, it seems the change of the setback from 25 feet to 6.5 feet, currently does not change the plan, but he fears a change will be put through to change the buildings setback from 25 feet from his property, to only 6.5 feet from his property.

Planning Director Husak stated the setback difference is only through the parcel, it is not on the side that is adjacent to Mr. Sanderson's property.

Chairman Hrivnak asked if there were any one else who would like to address the Board on this variance. Hearing none, he closed the public comment for this variance.

MOTION: Janice Hitzeman moved to approve the variance to Code Section 1143.15A, to reduce the required street frontage on parcel number 31923001003000 from 160 feet to 0 feet. Randy Duncan seconded the motion. Chairman Hrivnak requested a roll call for passage: Janice Hitzeman, yes; Ryan Brickner, yes; Jim Hrivnak, yes; and Randy Duncan, yes.

VOTE: Y 4 N 0 (None) AB 0 (None)

Motion passed 4-0-0.

MOTION: Janice Hitzeman moved to approve the reduction of the required minimum setback from 25 feet to 6.5 feet on the southern part of the larger parcel with the lot line running east to west on parcel number 31923001003000. Jim Hrivnak seconded the motion. Chairman Hrivnak requested a roll call for passage: Janice Hitzeman, yes; Ryan Brickner, yes; Jim Hrivnak, yes; and Randy Duncan, yes.

VOTE: Y 4 N 0 (None) AB 0 (None)

Motion passed 4-0-0.

V) STAFF COMMUNICATIONS

Planning Director Husak updated the Board on the variance approved at the last meeting, for the church on Sawmill Road. They have revised their sign permit and all of the design details were revised to the code requirements. She stated that, with the Board's findings, it has been approved by staff.

The appeal filed for the Welwyn property south of Liberty Hills, has been withdrawn by the petitioner, therefore the appeal will not be moving forward. There has been a records request for the Boards review of the project and variance request. Staff has given them the City's records from your findings and from the Staff review of the variance.

Chairman Hrivnak asked if the request was for records from the first hearing or the second hearing.

Ms. Husak responded the request was for the second hearing and that is what was provided. Staff offered to meet with them and answer any questions.

She also advised Staff has been working with the Community Development Committee on Code updates. This was mentioned previously, especially with the training done with the Law Directors office, regarding the possibility of pulling the BZA rules, regulations and standards, and putting it more concisely in the Code.

Staff has gone through the Charter and Zoning Code and pulled out where BZA is mentioned, which is kind of all over the place. Staff is hoping to consolidate that into a solid section of the Zoning Code, which deals with the BZA and also make our standards more easily understood. Applicants have a hard time figuring out what these mean because it is legal in terms of what the BZA rules are, but for a resident wanting to apply for a variance and answer those questions it tends to be very difficult. Staff would like to make it more user friendly while still sticking with the law and the judicial process the Board is required to uphold.

She advised there were no applications for the June meeting, but would like to hold a work session for a discussion with the Board about the Code. It would be advertised as a public meeting. Staff will put together an outline of where the Code is now and what type of changes could be made.

Chairman Hrivnak said he thinks it is a good idea and asked who was responsible for the re-writing of the code. He also asked if the changes would be approved by City Council.

Planning Director Husak stated they would hope to do the changes in-house with the Law Directors Office, Yazan Ashrawi or Jesse Shamp. She also stated an outline would be prepared for discussion. Staff would share with the Board what has been discussed with the Development Committee, then take the Board's comments into account and come back to the Board with a draft to adopt, which the Board would then submit to Council for approval.

Chairman Hrivnak asked if the application standards would be addressed because it is confusing whether an item that is substantial is good or bad thing because the standards do not indicate whether it is or not. He also has an issue with the question regarding whether the applicant new about the issue when they purchased the home.

Ms. Husak said the substantial question is confusing to Staff and applicants as well, but it is a recognized standard.

Chairman Hrivnak said typically you would ask questions so that they are all either yes or no answers, which is not the case here where they are back and forth.

Ms. Schellin stated there is no way for Staff to weigh the standards if an applicant gets 5 out of 7 or 4 out of 7 to recommend the approval of an application.

Chairman Hrivnak stated the code does talk about how each question is weighted differently.

Ms. Husak stated that is why they are wanting help from the Law Directors office and there are standards in law that have established some BZA rules. She wanted to make sure the Board was aware that they are also in charge of conditional uses and cell towers depending on what Zoning District they are in. Staff is hoping to put this all into one section and then reference other sections. Currently, the Code is slightly discombobulated where the BZA fits in and it is cumbersome to figure out.

Chairman Hrivnak said he appreciates the effort and asked for comments from other Board Members.

Randy Duncan responded that it is a great initiative and he is looking forward to working on it.

Janice Hitzeman said she thinks it's great and would like to see the draft before it goes to City Council. She typically likes to see a red-line version when changes are made and realizes this would be different because you are pulling from different sections but she would still like to see where the items came from in the Code.

Ms. Husak stated that the outline would be given to the Board to get their input and then a draft would be created, which the Board would approve before going to City Council.

Ryan Brickner asked if would be the same language theoretically just moved into its own section. He also stated he is in agreement with anything that makes it more efficient.

Ms. Husak stated there is room for new language but that staff will work with the Board and the Law Directors office to determine what that ought to be.

Chairman Hrivnak stated that there is no deadline so even if it takes a meeting or two the Board is happy to work with Staff on the update. He is looking forward to having a more concrete way to make a decision. It is best to have exact criteria in case there is an appeal of the Boards decisions, so he would like to see tighter criteria.

Ms. Husak thanked the Board for doing an excellent job of making motions on point and said that based on what the request is and the findings that is the most defensible action to take. She confirmed the meeting on Thursday, June 2, 2022 at 6:30 p.m. will be a working meeting.

VI) ADJOURNMENT

MOTION: Ryan Brickner moved to adjourn. Randy Duncan seconded the motion.

VOTE: Y 4 N 0 (None) AB 0 (None)

Motion passed 4-0-0.

Meeting adjourned at 7:08 p.m.

MINUTES APPROVED: JUNE 2, 2022



Jim Hrivnak,
Chairman
Date 6/2/22



Pam Friend,
Planning & Zoning Clerk
Date 6/2/22