

# Board of Zoning Appeals

## August 11, 2016

**Members present:** Chairman Phil Rooney; Doug Warren, and Sharon Rooney. Present on behalf of the City of Findlay is Todd Richard, Zoning Department Administrator, and Deidre Ramthun, Recording Secretary.

The meeting was called to order at 6:00 p.m. by Chairman Rooney. Mr. Rooney introduced the members to the audience and the general rules were reviewed.

**Case #55045-BA-16 (524 Defiance Avenue)** was introduced. Mr. Richard read his comments as follows: Filed by Timothy Porter, the case is regarding a new fence at 524 Defiance Avenue. The applicant is seeking a variance from section 1161.03B1 of the City of Findlay Zoning Ordinance. This section requires fences in the required front yard to be no more than 4 feet in height and at least 50% open. The applicant has constructed a 4 foot high fence but it is solid within the required front yard, contrary to an approved plan.

A permit was issued for a 6 foot high fence out of the required front yard. The required front yard in this district is determined by the average setback of the structures on each side of the subject property. The purpose of this requirement is to allow for consistency along the front building lines throughout each neighborhood. According to the owner, the average setback in his case is 16.25 feet from the front lot line. Any fencing closer would have to meet the 4 foot and 50% open requirement.

Having a fence at least 50% open allows vehicles leaving driveways and alleys a better chance of seeing pedestrian and vehicular traffic. Previous requirements allowed a fence with a 10 foot setback and a 4 foot height limitation, but the fence could be solid.

Upon a routine inspection, it was discovered the fence was constructed in violation to the zoning code. The permit was very clear of the setback requirement. The applicant's disregard is clear. There were discussions regarding the requirements prior to the permit being issued. The applicant has a large dog that is protective; probably having it further from the sidewalk would be a good idea anyway. It's probably big enough to see over a 4 foot high fence and possibly become aggressive to any passersby.

There is no doubt the applicant has an odd shaped lot. It's very wide and shallow and is occupied by a lot of building area so the fenced area is very constrained, especially for a large dog.

The request seems to have little merit.

Chairman Rooney swore in Timothy Porter, 524 Defiance Avenue, Findlay, Ohio. He stated that we talked to Todd about building a fence. We originally wanted to go 6 feet high all around all the way up to the property line. He told us of the law that it had to be 25 feet back from the property line, that it had to be 4 foot tall, it had to be 50% open. We asked about an appeal. He said an appeal is something we can do. I asked him what my chances were. He said they were very good. We decided not to spend the money and we conceded and went with the 4 foot fence. He told us about the variance with the

two houses on either side to go to 16.25. We measured and got our 16.25 foot. We started building a fence. We got all the way to the front; put all the fence panels up; started pulling panels out for the 50% open and realized that the fencing we bought was really weak and could easily be broken by the 130 lb. lab that we have sticking his head through them so we didn't take the rest of the panels out; we put that one back up. I've never built a fence like this before; I didn't know how serious it was to have it 50% open. I know he told us it would need to be; I figured if it was an issue, somebody would say something. Yes, he came and said something about it and we asked about an appeal again and then he told us at that point we didn't have much of a shot because we had already erected the fence and didn't pull the 50% out. I appealed it anyway hoping that I could do something because I already have the posts sunk in the ground, have them cemented in, everything's put up. I would have to completely pull everything back out, re-cement new posts, and buy all new fence panels to fence it in the rest of the way at the 16.25. The dog is 130 lb. lab/dane mix. He is not aggressive but he is protective of our 16 year old autistic daughter who needs a fenced in yard to play in because she is too trusting of anyone coming down the street. I am concerned about her talking to just anyone she doesn't know and taking off. I need her in a fenced in yard. My yard is not very big. I do not hardly have any back yard at all, just a small, about a 10 foot strip, and most of that is bricks and rocks, patio. The side yard – not very deep, very narrow. Other than that, I've got two letters—one from each neighbor on each side stating that neither one of them have a problem with the fence; that it does not impose a view problem backing out of their driveway. The fence I constructed is 11 feet from my driveway. I can see fine coming down the sidewalk when I'm backing out of mine. One of Todd's main issues was a car that's parked next to the fence. He was worried that the car might hit somebody backing out but that car doesn't move; that car is for sale. There's issues with the car; it does not move. That's the only reason it's sitting there. Mr. Porter shared the letters he received from the neighbors and pictures of the fence with the BZA Board Members.

There was no other communication.

Mr. Richard stated, "There is one thing I want to clarify and that is that I never speak for the Board of Zoning Appeals. The most I will say is the support a request may get from our office whether it be good or bad. I never say there's no way the Board's going to go for this or this is a slam dunk for the Board. I've never done that; I never will. I will talk about past trends. I think it's fair that an applicant knows what your past rulings have been, kind of what the trend has been and the past support it will get or not get from this office, but I do not say you will get this or you will not get this. I just want to clarify that."

Mr. Porter responded that he wanted to clarify, "I did not say that he did say that I would or wouldn't get anything. He said I had a good chance."

Mr. Rooney stated, "He understands, he's telling you what we've done in the past. He's not worried about it. That has no bearing on anything."

Mr. Warren asked, when you create fence with 50% open area, there's lots of ways to do that, right? It isn't just buying a fence and taking every other slat out. They sell fence that has 50% open.

Mr. Porter commented that at the time he had already purchased the fence, approximately three months ahead of time. He did not realize the 50% open code at the time. The fencing was already stored in his garage and waiting to try to attain a permit.

Mr. Warren asked Mr. Porter what he thought the code was.

Mr. Porter replied that he did not know what the code was, that's why he wanted to ask about it. It's the first fence he's ever constructed.

Mr. Rooney asked Mr. Richard, our code doesn't say what kind of fence as long as you can see through it. Mr. Richard stated that the code does prohibit chain link in the front yard. Mr. Rooney asked if that was new. Mr. Richard replied that it's from 2012.

Mr. Warren asked about Drawing 54762 that shows a 16.25 setback and 6 feet all the way around. When was that discussed?

Mr. Richard replied that was the plan that we approved and had discussed with the owner. He did another drawing that was cleaner for you.

There was further discussion from Mr. Warren who asked when this was from. Mr. Richard commented that this was issued with the permit on May 26, 2016 and it's stamped with the permit number. That's the one that we reviewed and approved – 6 foot high fence at least 16.25 feet from the front lot line.

Mrs. Rooney asked about the two drawings. She asked if the drawing that was approved and the other drawing were not proportioned the same, there was nothing added. Mr. Richard replied that the second drawing is depicting what is existing. Mrs. Rooney commented that it would have been the same measurements. Mr. Richard replied yes. There was further discussion and explanation of the drawings.

Mrs. Rooney questioned the extra 4 foot fence not on the drawing that was constructed without approval, stating that it's not on the original plan.

Mr. Porter stated that he thought he had the 4 feet on the original drawing.

Mrs. Rooney stated that it doesn't have it on there as far as she can see and it looks like you were approved for this and you just went ahead and did this.

Mr. Porter replied that at the time it was because we discussed the temporary construction. He says no chain link, but he approved to go ahead and put a temporary chain link up at the 16.25 foot until we decided what to do with the 4 foot because we were going to appeal it, but then we decided not to; but maybe we had forgotten to redo the plan with the 4 foot.

Mrs. Rooney asked and commented that Mr. Porter did not have a permit for this part of the fence.

Mr. Porter replied, "I'm guessing not now. I thought that we had it drawn down on the paperwork. My wife drew up the plan."

Mrs. Rooney asked Mr. Richard if she was understanding that correctly.

Mr. Richard stated that from what he can tell on the plan; and we had a discussion. What has been approved is what is highlighted on the front on the first plan. It's got a 16.25; that's what was stamped and approved. When they originally drew it, it looks like it did come out to the sidewalk because you can tell that he has whited out what they wanted to do. At the time, we said that is not permitted.

They went back and took the measurement to get the average so we could find out how close can a 6 foot high fence be to the front lot line? Otherwise it's just 25 feet. But in the zoning district, you're allowed to take the average down to a 15 foot setback. They came back and said its 16.25 feet. We adjusted the plan, Mr. Richard highlighted what they could do, and put on the permit what they could do; so there shouldn't be any confusion about putting a 4 foot high fence out there because it was never approved.

Mr. Porter stated that he is very confused about why the 4 foot is not on there because originally we had a 6 foot drawn up on the original plan and he said we couldn't do that.

Mrs. Rooney stated, "As he said, when you came in to get this approved, he whited it out and showed you where you could go."

Mr. Porter replied, "Okay, I know we had conceded on the 4 foot and decided to go with the 4 foot which is why he thought the 4 foot was still on the plan."

Mrs. Rooney said, "Didn't you look at your"

Mr. Porter said, "Not after we had conceded, I guess not after he whited it out; I didn't realize it was gone."

Mrs. Rooney stated, "Well, two things – going out and buying materials for all this without getting approval first of all is not something that could make a difference on whether or not you should have this; and secondly, if you get a permit, you really need to look at it and make sure what it actually is approved for."

Mr. Porter replied, "I never stated that because I bought it previously that that meant that I could put it up. I just bought the materials knowing that I could put something up. The problem was that the fencing was, we bought the fencing we could afford. It was the cheapest fencing they had and I spent over \$1,300 on all the fencing, and the fencing has got very weak panels in it which is why when we got to the 4 foot section we realized that the dog would be able to break the panels off if he stuck his head through."

Mrs. Rooney commented that she understood.

Mr. Warren stated, "To comply either you go back to this drawing where the 4 or 6 foot fence at 16.25 feet off the property line is okay, it doesn't require a variance; or the 4 foot fence has to be 50% see through and, if that's the case, a variance isn't required."

Mr. Richard replied, "Correct, those are the choices. The gentleman wanted to try his chance with a variance and that's fine."

A motion was made by Mr. Warren. When he looks at the six conditions, he doesn't see where we're satisfying any of the six conditions. Probably the only one that you could even consider, and he's more with what Sharon said, the fact that the fence is up is somewhat of a unique condition, but it really shouldn't be up. He would vote that the alternatives are that the fence be modified so that the 4 foot section is 50% see through or that that comes down and it's closed back at 16.25 off the property line

with the 6 foot fence. Both of those seem like reasonable alternatives and fit the neighborhood better, so Mr. Warren made a motion that we don't grant the variance.

Mr. Rooney stated that we have a motion to deny the variance. Said motion was seconded by Mrs. Rooney. The vote to deny the variance was 3-0.

**Case #55047-BA-16 (1700 Park Street)** was introduced. Mr. Richard read his comments as follows: Filed by Bret Medley, on behalf of the Clause Jackson Estate. The applicant has filed for a variance from sections 1162.05B and 1122.07 of the City of Findley Zoning Ordinance. The applicant wants to replace an existing home with a new one on the existing foundation. The code requires the new dwelling to meet all setback requirements and provide at least 1,300 square feet of living space and he's only proposing 877 square feet.

The applicant is finalizing the purchase of this property. The previous owner is deceased and the estate has had some complications in the Probate Court. The current dwelling is dilapidated and is an extreme eye-sore. The applicant wants to remove the frame structure and build a new dwelling on the same foundation. Since this is a nonconforming structure, once it is removed, it has to meet the applicable setback requirements (15 feet in the front and 5 feet on the side).

The property should probably rezone to the R-3 district because of the lot width. The setbacks would then be 5.5 feet in the front and 3 feet on the side. The minimum living area would be 800 square feet.

The dwelling to the south is 9 feet from the front lot line and the dwelling to the north is 2 feet, that's why we only have an average setback of 5.5 feet. The request would allow the new dwelling to at least be consistent with the immediate area. The average living area of the dwellings near this property is about 1,100 square feet.

The request is reasonable; however, the applicant should be required to at least apply for a zoning amendment to have the property rezoned to the R-3 District. We should also have some discussion about the front stoop and the applicant's intention because we did not include that as far as the setback or building line.

Mr. Rooney asked if he were to change it to R-3, would he meet all the requirements and wouldn't need a variance. Mr. Richard responded that he would but this is quicker. If he goes through the zoning amendment and gets it, your variance basically becomes a moot point.

Chairman Rooney swore in Bret Medley, 1700 Park Street, Findlay, Ohio. He bought the house with the intention of fixing it up but once he started tearing things out to fix it, it's just destroyed. They built walls on top of walls, a roof on top of a roof, and he wants to make it right, not last for 15 years and fall apart again. He'd like to get rid of it, replace it, and improve the neighborhood. To tear out the foundation and move everything back, it's a huge expense and pricing himself out of the neighborhood. A guy across the street is closer than what he is. Mr. Medley said the house is horrid.

Mr. Warren asked about the plan for the stoop. Mr. Medley said that he would roof it. Mr. Warren said that if you cover the stoop, it becomes part of the setback issue. Mr. Richard confirmed that it would become part of the setback issue if the stoop is covered but he could have a deck. It becomes a new building line if the stoop is roofed. Mr. Medley stated that he wants to make it easy for everybody.

Mr. Warren stated that the drawing shows a 14 x 8 existing shed but didn't see it on the property. Mr. Medley and Mr. Richard confirmed that the shed is on the property located near the house.

Mr. Warren questioned the other buildings on the property. Mr. Richard stated that Mr. Medley has been issued permits for other construction (detached buildings he wants to have on the property) and at the same time improve the property with a new home. Further discussion took place regarding the detached garages. Mr. Richard stated that Mr. Medley is committed to doing this and asked if he has applied for the zoning amendment. Mr. Medley confirmed the discussion and is committed but has not yet applied for the zoning amendment.

A motion was made by Mr. Warren that in this case the existing neighborhood has quite a few buildings that line up with the proposed front building line and also the neighbor is on the line and the other is quite a bit closer. There are a number of homes up and down Park Street that are within this building line so that is typical for the old residential neighborhood and a unique circumstance. Reusing the foundation is a unique circumstance and the ability to do that makes sense given the fact that the magnitude of the variance and the harmony with the other homes. Based on that he makes a recommendation to approve the variance as long as the permit is picked up within 60 days.

Mr. Richard asked that discussion also be held on the fact that he apply for the zoning amendment, to at least try to go through that process. Mr. Warren said that he wouldn't want to make that a condition. There was further discussion regarding the zoning.

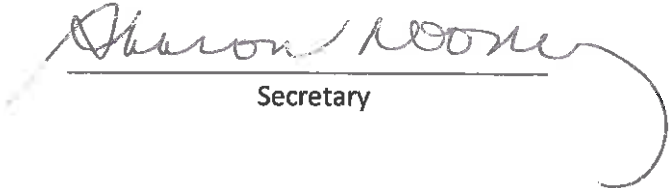
Said motion was seconded by Mrs. Rooney and the motion was approved unanimously, 3-0.

Mr. Richard introduced Brett Gies as an alternate to the Board of Zoning Appeals.

A motion was made by Mr. Warren to approve the July minutes as written. The motion was seconded by Mrs. Rooney. The motion to approve the minutes passed 4-0.

The meeting was adjourned.

  
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Chairman

  
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Secretary