

# ZONING BOARD OF APPEALS MINUTES 08-17-2017

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## MEETING HELD IN THE CITY COMMISSION CHAMBERS THIRD FLOOR, 225 E PORTAGE AVENUE AT 5:30 PM ON THURSDAY, AUGUST 17, 2017

*Pending approval by the Zoning Board of Appeals*

### 1. **Call to Order:**

The Zoning Board of Appeals meeting was called to order by Jeremy Gagnon at 5:30 p.m.

### 2. **Roll Call of Board Members:**

Roll call was taken to reflect the following quorum:

**Present:** Jeremy Gagnon (Chair)  
Ken Dunton  
Gary Dean  
Steve Twardy

**Absent:** Bob Casey (Vice-Chair)  
Beverly McCready (Secretary)  
Dan Campbell

**Staff Present:** Kelly Freeman (Community Development Director) and Melanie McBride (Community Development Office Coordinator)

**Public Present:** Bernice Rutecki  
Nancy Kirkpatrick  
Doug Kirkpatrick  
Alda Routhier  
Joseph Goetz

### 3. **Excuse absent board members:**

*It was moved by Ken Dunton and supported by Steve Twardy to excuse absent board members. The motion passed unanimously.*

### 4. **Acceptance of the Minutes of the Zoning Board of Appeals meeting held on June 15, 2017:**

Additions or deletions: There were none.

*It was moved by Steve Twardy and supported by Gary Dean to accept the Zoning Board of Appeals Meeting Minutes of July 20, 2017. The motion passed unanimously.*

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Next, Jeremy Gagnon outlined the procedure for the variance. He explained that first City Staff will present the background information and then the applicant will have an opportunity to provide additional information and explain why he or she feels that the variance is warranted. Next, he said that comment is opened up to the public. If anyone from the public wishes to address the Board, he asked that they state their name and address for the record, and direct their comments to the Chair. After all the members of the public have spoken, the matter comes before the Zoning Board for discussion. He added that members of the Board may ask City staff or the applicant any questions at that time.

### **5. St. Mary's Riverview Condo Association (2 part request):**

- 1.) A variance from Section 10-1.1712(2)(a) of the City's Zoning Ordinance to permit a previously constructed 6 foot tall, 100% solid fence to remain in a location where the maximum height is four feet and maximum solid percentage is 70%:

Mr. Freeman began his power point presentation on the St. Mary's Riverview Condo Association property at 1651 Riverside Drive. The subject property is located on the east side of Riverside Drive just south of Rotary Park. The property is a two story, 12 unit condominium development constructed in 1998, with two detached garage buildings. The property features 330' of frontage on Riverside Drive with a variable depth between 72' on the south end and 220' on the north end.

The fence was constructed by a previous condo board to protect vehicles from being damaged by golf balls coming from the golf course across the street. The fence is in violation of the zoning ordinance due to being 6' tall and 100% solid construction. The zoning maximum within a front yard is a limit of 4' tall and 70% solid construction. When staff was looking into the fence matter, it was brought to their attention that a number of the parking spaces were installed within the front yard. Those spaces appear to have been added shortly after construction was completed, and are similarly in violation of the zoning ordinance. Mr. Freeman displayed a copy of the approved site plan. The parking spaces are not entitled to grandfather status due to being non-compliant when constructed. Mr. Freeman then displayed an edited version of the site plan showing the extended parking area and fence, both located into the required front yard setback.

Variances can be granted when the Zoning Board of Appeals finds undue hardship as to the use of the property is caused by: Narrowness, shallowness, shape or area of the property, topography, extraordinary or exceptional conditions of the property.

Mr. Freeman gave his hardship analysis of the property. The Riverview Condos are located in the tourist zoning district, which has no minimum width. It was difficult to determine dimensional hardship due to the closest similar development, Waterfront Place Condos, is over a mile away and wasn't a useful comparison. 330' width is the widest by far among the single-family residential properties in the vicinity. Depth was variable between 72' and 220'. The maximum depth was within 30' of the other waterfront properties in the area. Compared to other properties, the depth is much more variable. Mr. Freeman noted there was a "cove" in the shoreline about mid-property which necessitated pushing a portion of the structure 35' closer to Riverside Drive to remain out of the 20' setback from the waterline. The resulting

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protrusion creates a pinch point where the parking spaces and fence are located. The shape of the property similarly creates a hardship in the same as the depth. The property is 1.2 acres and is not a source of hardship. Topographically, the “cove” creates a hardship as to its interaction with the setbacks.

For the extraordinary or exceptional circumstances, Mr. Freeman addressed the fence and parking spaces separately.

In regards to the fence, the threat from golf ball impacts is tangible. The property had damages to siding, fascia, gutters, shutters, and downspouts. They have also had issues with vehicles being struck with golf balls and at least one individual was hit with a golf ball while retrieving the mail. The fence is not going to be a cure all for the golf balls, but will provide some added protection for the seven parking spaces that are exposed. A 4’ tall, 70% solid fence would be unable to provide adequate protection. Mr. Freeman feels there is a very clear hardship present, simply because the fence is there to prevent property damage from occurring.

In regards the parking spaces, the property did meet the minimum standard of 2 spaces per unit (24 total) when the site plan was approved. At the basic level, there is technically not a hardship. Looking into it deeper, 12 of the parking spaces are located in garages, which are not available to the general public. The striping pattern of the parking lot was changed since the original approval. Original plans show 10 spaces adjacent to the building, and currently only 8 are striped. The reduction in spaces appears to prevent vehicles from parking directly in front of walkways into the units, making access into the building easier. It is likely that a good number of the garages contain personal property rather than vehicles, due to there being no basements or storage areas on this development. Off street parking is not a viable option on Riverside Drive. Mr. Freeman feels a hardship is created by the relatively small pool of available visitor parking spaces, and the poor off-street parking environment.

In regards to public comment, Mr. Freeman received one phone call in favor of the request. Mr. Freeman’s recommendation is approve both variances.

Jeremy Gagnon opened the floor for public comment.

Bernice Rutecki, secretary for the Riverside Condo Board, commented that the fence has prevented damages to the cars.

Alda Routhier commented that she has lived at the property for 15 years. She would not let her grandchildren play because the golf balls could hurt people. She stated that one of the previous owners got hit in the head by a golf ball while retrieving his mail. Alda also noted that the builder of the fence contacted Mr. Akkanen of the building department and the builder believed that 6’ tall fence was allowed along Riverside Drive. She also spoke of the dangers that golf balls pose to the vehicles on the property.

Jeremy Gagnon opened up board discussion.

Gary Dean asked Alda Routhier if the Country Club Golf Course had an agreement to provide a fence to stop the golf balls.

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Alda Routhier responded that due to the golf course being there before the construction of the condos, they were unwilling to help.

Gary Dean added that he remembered the issue being brought up at City Commission meetings.

Alda Routhier responded that she went to many commission meetings but they were not willing to help. If she would have known about the damaging golf balls she would not have bought her condo. She also added that the new golf course owner has moved the 1<sup>st</sup> hole tee to help with golf balls coming in direction of the condos.

Jeremy Gagnon added that he has played golf many times and has seen golf balls being hit in the direction of the condos. He sees no issue with the fence in front of the parking spaces.

*It was moved by Ken Dunton, and supported by Steve Twardy, to grant the variance as requested. The motion passed unanimously.*

Roll Call vote:

Jeremy Gagnon (Chair)	Yes
Gary Dean	Yes
Steve Twardy	Yes
Ken Dunton	Yes

2.) A variance from Section 10-1.1703(2) of the City's Zoning Ordinance to permit previously constructed parking spaces to remain in the required front yard where they are otherwise prohibited:

Jeremy asked if there was any public comment or board discussion in regards to the parking spaces.

*It was moved by Ken Dunton, and supported by Steve Twardy, to grant the variance as requested. The motion passed unanimously.*

Roll Call vote:

Jeremy Gagnon (Chair)	Yes
Gary Dean	Yes
Steve Twardy	Yes
Ken Dunton	Yes

### **6. Joseph Goetz setback variance for deck:**

A request was received from Joseph Goetz for a 7'6" front setback variance from Section 10-1.1600 of the City's Zoning Ordinance to permit the continued construction of a deck within the required front yard. Said property is 1101 Augusta Street.

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Mr. Freeman began his power point presentation on the deck at 1101 Augusta Street. The subject property is located at the southeast corner of Augusta Street and E. 4<sup>th</sup> Avenue. The property consists of a single family dwelling with two accessory sheds situated on a 38' x 125' lot. The applicant began building a deck which was notice by our Ordinance Enforcement Officer. No building permit had been issued and the owner discontinued construction. The deck looked to be approximately 8' x 8'. The deck looked to extend 7'.6" into the front setback. Ordinarily the front setback is 20', however the Zoning Ordinance has a provision that allows for less when the block average is less than 20'. This block's average setback is 13'. In 2014 there was a provision added to the Zoning Ordinance that allows a 5' x 5' deck by right, but this deck exceeds that in both size and maximum square footage.

Mr. Freeman began his hardship analysis. The property is zoned R-1. The minimum width in the district is 50' and the minimum area is 5,000 square feet. At 38' in width and 4,750 square feet, the subject property is narrower and smaller than the minimum standards set by the Zoning Ordinance. This was not a significant factor in the applicant's request. Mr. Freeman found no hardships in relationship to shallowness, shape, depth, or topography. Mr. Freeman noted some extraordinary or exceptional circumstances in relationship to the subject property. This property is located on a corner and the location of the driveway mid-property hinders the usability of the back deck on the property. Mr. Freeman feels that the deck at the proposed size of 8' x 8' would become the closest structure on Augusta Street. If the deck was reduced by 2' to 6' x 8', it would bring the deck even with the front of the closest structure on that side of the block. Mr. Freeman received no public comment in regards to this request.

Mr. Freeman recommended conditional approval for the requested variance, subject to the deck size being reduced to 6' by 8' so that the encroachment is reduced to 5' 5".

Jeremy Gagnon opened the floor for public comment

There was no public comment.

Jeremy Gagnon opened up board discussion.

Gary Dean asked which direction the stairwell would be coming down from the deck.

Mr. Freeman responded that it would be on the north side of the deck toward the sidewalk. He added that stairway access does not apply toward encroachments.

Jeremy Gagnon and Steve Twardy asked for clarification on the recommended deck size. The angle of the photos provided in the packet looked like the neighbors deck goes out further than the applicant's deck.

Mr. Freeman clarified that the angle of the photograph is distorting. He added that the 6' x 8' recommendation is to hold the line on the block, instead of allowing the applicants deck to be 2' further out than any other structure on the block.

Gary Dean asked if the measurement starts at the small enclosed porch. Mr. Freeman confirmed.

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Jeremy Gagnon added that the 6' x 8' size was just to give the applicant a little more room to enjoy the deck instead of just a landing. Mr. Freeman confirmed.

Steve Twardy asked if the photo is a representation of the work that has been completed on the deck so far.

Jeremy Gagnon and Mr. Freeman stated the deck has been removed until the applicant knows what can be built.

*It was moved by Ken Dunton and supported by Gary Dean to approve the variance, subject to the deck size being reduced to 6' x 8', as recommended by Mr. Freeman.*

Roll Call vote:

Jeremy Gagnon (Chair)	Yes
Gary Dean	Yes
Steve Twardy	Yes
Ken Dunton	Yes

### 7. **Douglas Kirkpatrick setback variance for deck:**

A request was received from Douglas Kirkpatrick for a 12'4" front setback variance from Section 10-1.1600 of the City's Zoning Ordinance to permit a previously constructed deck to remain within the required front yard. Said property is 110 W. 6<sup>th</sup> Avenue.

Mr. Freeman began his power point presentation on the deck located at 110 W. 6<sup>th</sup> Avenue. The subject property is a single family dwelling with a small two-car attached garage located on a 75' x 130' parcel. The deck was noticed by the planning staff. Construction of the deck was completed prior to contact being made by the Building Official. The deck is approximately 12' wide and 6' 10" deep. The deck was constructed to replace an existing 8' x 5' deck which had reached the end of its usefulness. The existing deck also did not meet setback requirements, and was likely constructed without a permit based upon the lack of adequate guards on the rails. Section 10-1.1600 requires a 20' front yard setback. The block average does not tip the scale in the applicant's favor. The dwelling is already encroaching into the front setback by 5' 6". Adding a deck depth of 6' 10" increases the total encroachment to approximately 12' 4". A 5' x 5' landing is allowed by right, but the deck as constructed exceeds that by both size and square footage.

Mr. Freeman began his hardship analysis. The property is zoned R-1. The minimum width in the R-1 district is 50' and the minimum area is 5,000 square feet. The subject property is 75' wide and has a total area of 9,750, which is well above the minimum width and area. Other non-factors were the shallowness and shape. The property has some slope toward the southeast. There is approximately 5' elevation difference between the front of the dwelling and the edge of the road. It is not necessarily a hardship, but does mitigate the proximity of the deck to the street. This neighborhood has highly variable setbacks ranging from zero to nearly 30'. The adjacent house to the west is 10' further back. In taking a position that the proximity does create a hardship, it would be appropriate to look at mitigating factors. There is only one

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adjacent neighbor. There is a large tree that obstructs the view of the deck. The difference in the grade mitigates the appearance of the deck. Due to the height of the home, the north side of the home would get no sunlight if a deck was built at that location.

In regard to public comment, Mr. Freeman received two phone calls, three emails, and one letter. All were in support of the application. The letter and emails were passed around to the board for review.

Mr. Freeman's recommendation was to approve the variance as requested.

Jeremy Gagnon opened the floor for public comment.

Doug Kirkpatrick asked if the board had any questions for him.

Jeremy Gagnon asked if the deck was completely reconstructed, or if part of the old deck was used.

Doug Kirkpatrick responded that it was totally reconstructed. Only the one posthole was reused. He added landscaping to mitigate the view for the neighbor.

Mr. Freeman added that one of the neighbors across the street were one of the phone calls in support of the request.

Jeremy Gagnon closed public comment and asked for board discussion.

Jeremy Gagnon asked Mr. Freeman if the applicant had left the original posts and rebuilt, would he have been able to do that.

Mr. Freeman responded that technically it would not be allowed because new construction needs to be building code compliant. The department allows some leeway and understanding to those doing maintenance on their home.

Ken Dunton asked for clarification as to a building permit.

Mr. Freeman responded that there was no building permit issued, but the Building Official is aware of the deck, and will be following up with the applicant.

*It was moved by Steve Twardy, and supported by Ken Dunton to approve the variance as requested.*

Roll Call vote:

Jeremy Gagnon (Chair)	Yes
Gary Dean	Yes
Steve Twardy	Yes
Ken Dunton	Yes

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**8. Public Comment:**

There was no public comment.

**9. Other Matters Presented to the Board or Staff:**

There was none.

**9. Adjournment:**

*It was moved by Ken Dunton, and supported by Steve Twardy for the meeting to be adjourned at 6:12 p.m. The motion carried.*

Respectfully submitted,

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Jeremy Gagnon, Chair  
Zoning Board of Appeals