

# ZONING BOARD OF APPEALS MINUTES 05-18-2017

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## MEETING HELD IN THE CITY COMMISSION CHAMBERS THIRD FLOOR, 225 E PORTAGE AVENUE AT 5:30 PM ON THURSDAY, MAY 18, 2017

### 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)  
Andrew Barnebey (Vice-Chair)  
Beverly McCready (Secretary)  
Gary Dean  
Bob Casey  
Dan Campbell  
Steve Twardy

**Absent:** Ken Dunton

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

**Public Present:** Larry Bitnar  
Jennifer Garnett  
Jake Nicholson  
Stephanie Farlow  
James Gillotte  
Geneieve Gillotte

### 3. Excuse absent board members:

*It was moved by Steve Twardy and supported by Bob Casey to excuse the absence of Ken Dunton. The motion passed unanimously.*

### 4. Acceptance of the Minutes of the Zoning Board of Appeals meeting held on April 20, 2017:

Additions or deletions: There were none.

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

## ZONING BOARD OF APPEALS MINUTES 05-18-2017

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Jeremy Gagnon asked to adjust the agenda. He needed to recuse himself from item 6, the Bitnar use variance. He asked that item 6 and item 7, the Nicholson fence variance, be switched.

*It was moved by Gary Dean to adjust the agenda, and supported by Dan Campbell. The motion passed unanimously.*

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. McLeod Variance Extension Request:**

A request was received from Jason McLeod for a twelve (12) month extension to a variance granted on June 22, 2016 to permit the construction of a raised parking area in the front yard of 930 Brown Street.

Mr. Freeman discussed the email from Jason McLeod asking for an extension of one year to complete the raised parking area. Mr. Freeman explained that Mr. McLeod has completed three (3) of the four (4) projects that required a variance last year. Due to an insurance claim on one of his properties, he was not able to complete the last project.

There was no public comment. The applicant, Jason McLeod, was not in attendance.

Board discussion:

Bob Casey commented that he has done great work on his properties so far, and he believes he will complete the work.

*It was moved by Andrew Barnebey and supported by Bob Casey to grant the twelve (12) month extension. The motion passed unanimously.*

### **6. Nicholson Fence Variance Request:**

A request was received from Jake Nicholson for a variance from section 10-1.1712(2)(a) to construct a 6', 100% solid privacy fence within the required front yard at 1001 Kimball Street.

Mr. Freeman started a power point presentation outlining the aspects of the property. The property is a single family residence with a detached garage located on a 70' x 89' parcel. The applicant began construction this spring on a six (6) foot tall, 100% solid privacy fence in the yard on Newton Avenue to provide outdoor space for an energetic dog. The fence was noted by the ordinance enforcement officer, and he made contact with Mr. Nicholson to inform him that a variance would be required. The applicant was aware that a six foot tall fence could not be

## ZONING BOARD OF APPEALS MINUTES 05-18-2017

---

constructed in the front yard, but was not aware the rule applied both sides on a corner lot. Mr. Freeman explained that the maximum permitted height is four (4) feet and no more than 70% solid construction. Mr. Freeman found that there was no hardship relating to narrowness, shallowness, shape, and area. The way the property was developed in a “sideways construction” manor creates the hardship with the setback requirements for a corner lot.

There was no public comment in response to the fence variance.

Mr. Freeman’s recommendation is to approve the requested variance from section 10-1.1712(2)(a) to permit the construction of a six (6) foot tall, 100% solid wood fence where proposed.

Jeremy Gagnon opened up the floor for public comment. Mr. Nicholson was in the audience, but did not have anything to add. He felt Mr. Freeman covered everything he wished to do.

Jeremy Gagnon then requested board discussion. Andrew Barnebey had a question regarding the original recommendation he received in his agenda. Mr. Freeman explained that there was an additional e-mail that went out, correcting that paragraph that was left in from a previous variance request. The 2<sup>nd</sup> e-mail contained the correct recommendation for this variance request. Beverly McCready asked what the dimension on the side yard. Mr. Freeman responded

Gary Dean asked why this fence recommendation is different than the one at 701 Prospect, which recommended a shadow box construction. Mr. Freeman responded that the length of fence is less, there is no adjacent sidewalk to this property, and the fence is also eighteen (18) feet back from the road.

*It was moved by Gary Dean and supported by Bob Casey to grant the fence variance as recommended. The motion passed unanimously.*

Jeremy Gagnon recused himself from agenda item 7 due to business dealings with the applicant, Larry Bitnar. Vice-Chair, Andrew Barnebey took over the meeting.

### **7. Bitnar Use Variance Request:**

Continued discussions from the April 20, 2017, ZBA meeting regarding a request from Larry Bitnar to utilize the existing 50’x80’ and 28’x36’ buildings located at 900 E. Spruce Street for motor vehicle and engine repair.

Mr. Freeman recapped that at the last meeting, Beverly McCready asked about a temporary use variance. Mr. Freeman spoke with city attorney, Steve Cannello, after the meeting. Although the board does have the authority to permit a temporary use variance, his recommendation would be to not proceed with a temporary variance. Steve Cannello explained to Mr. Freeman that once a property right is granted, it is very difficult to rescind. Mr. Bitnar will be putting funds in to these building improvements and he needs surety that his funds will be properly spent. If the board wishes to permit a temporary use variance, Mr. Freeman warned that it could not be taken away for things like neighborhood complaints.

## ZONING BOARD OF APPEALS MINUTES 05-18-2017

---

Mr. Freeman reminded the board that his recommendation has not changed from the last meeting. It is still his recommendation that the board denies the use variance for motor vehicle and engine repair. If the zoning board wishes to move forward with approval of the use variance, it is his recommendation that the board does so in a permanent fashion.

Mr. Barnebey opened up the floor for public comment. Mr. Bitnar added that he would not wish to have a temporary variance either, due to the improvements he needs to make to the building, such as possible sprinklers, handicapped bathroom, and handicapped parking spots. Mr. Bitnar would be adding another \$20,000 - \$30,000 to this project, to have the possibility of it taken away in a year's time.

Mr. Freeman had one phone call regarding this issue from Mr. Rick Clerc. He noted that there has been no additional noise caused by Caudill Diesel's garage. Steve Twardy asked if there were any other neighborhood complaints. Mr. Freeman has not had any other calls.

Andrew Barnebey requested board discussion. Beverly McCready asked to withdraw her idea for a temporary variance, with all board members agreeing with that decision. Dan Campbell asked what all goes into rezoning the property. Mr. Freeman explained that rezoning would be first heard through the Planning Commission. After their recommendation, it would go to the City Commission for final approval. Mr. Freeman feels that because of the re-zoning in 1965, which predated environmental testing, and our new knowledge of contamination of properties, there is a good argument for the rezoning to occur. The master plan does recommend residential for this piece of property, but the environmental testing concluded that this property is not safe for residential uses. Mr. Freeman will have an official position on this issue after the application for re-zoning has been received. Andrew Barnebey added that he feels that a re-zoning would be a better avenue for this issue to be handled. Steve Twardy asked how long the re-zoning process would take. Mr. Freeman explained it would be a two (2) to three (3) month process. Steve Twardy asked if it was approved for I1 zoning would there be more leeway in terms of types of buildings and things Mr. Bitnar is allowed to do. Mr. Bitnar is open to doing a conditional rezoning, in which he would eliminate the more intense uses allowed under the I1 zone, that does not apply to his property. This would help his chances for approval and ensure his neighbors peace, tranquility, and enjoyment of their property is upheld to the greatest extent possible. Larry Bitnar added that he would not be looking for anything more intense than what he is doing now, when he applies for the conditional rezoning to I1. Steve Twardy asked that if he gets the conditional rezoning, would he still have to get any variances through the Zoning Board of Appeals for some of the buildings and uses that are already there. Mr. Freeman explained that everything the zoning board has done would be eliminated due to it being allowed in the I1 district. Beverly McCready felt that Mr. Bitnar was originally asking forgiveness instead of permission for his first use variance with the Zoning Board of Appeals. She feels that you provide that to someone one time and this is his second attempt. He does great work and no one wants to see it shut down, but she feels you have to go about this the right way. Beverly McCready stated that her opinion would be to deny this use variance. Andrew Barnebey agreed that he does not agree with the use variance, and feels the Planning Commission is the correct avenue to handle this issue. Steve Twardy asked if this could be tabled until the Planning Commission and City Commission have ruled on the rezoning. Mr. Freeman explained that Caudill Diesel can remain operational until all avenues for

## ZONING BOARD OF APPEALS MINUTES 05-18-2017

---

remedy have been exhausted. He still has the Planning Commission as a remedy if the Zoning Board of Appeals denies the use variance. Steve Twardy clarified that he does believe that rezoning is the way to go. Mr. Bitnar had more supporters on his behalf than the one complaint against him. Steve Twardy feels that Mr. Bitnar has done a great job on the property and it would be wrong to see it shut down if the rezoning doesn't go in his favor. Larry Bitnar added that it would be wrong for the city to leave it residential due to the contamination. Steve Twardy addressed Mr. Bitnar, saying he applauded him for improving this property, and thus improving the city. Bob Casey added that bringing in business brings in jobs. The master plan hoped to add people to the city and has failed to do so, so far.

*It was moved by Bob Casey and supported by Steve Twardy to grant the use variance as requested.*

Mr. Freeman interjected, reminding the board that five (5) yes votes are required to pass a use variance.

Roll call to vote:

Steve Twardy	Yes
Beverly McCready	No
Dan Campbell	Yes
Bob Casey	Yes
Gary Dean	Yes
Andrew Barnebey	No

Vote was four (4) yes and two (2) no, so the use variance was denied.

### **8. Public Comment:**

There was none.

### **9. Other Matters Presented by the Board or Staff:**

The next scheduled meeting of the Zoning Board is scheduled for Thursday, June 15, 2017.

### **10. Adjournment:**

*It was moved by Beverly McCready and supported by Dan Campbell that the meeting be adjourned at 6:05 p.m. The motion carried.*

Respectfully submitted,

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Jeremy Gagnon, Chair  
Zoning Board of Appeals