

**MINUTES
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS
CITY OF OWOSSO
AUGUST 17, 2021 AT 9:30 A.M.**

CALL TO ORDER: The meeting was called to order by Chairman Horton at 9:30 a.m.

ROLL CALL: Was taken by Tanya Buckelew.

MEMBERS PRESENT: Board Members Tom Taylor, Robert Teich, Kent Telesz and Chairman Randy Horton.

MEMBERS ABSENT: Vice-Chairman Christopher Eveleth, Board Member Matt Grubb

OTHERS PRESENT: Justin Sprague, CIB Planning,

AGENDA:

**IT WAS MOVED BY BOARD MEMBER TEICH AND SUPPORTED BY BOARD MEMBER TAYLOR TO APPROVE THE AGENDA FOR THE AUGUST 17, 2021 REGULAR MEETING.
YEAS: ALL. MOTION CARRIED.**

MINUTES:

**IT WAS MOVED BY BOARD MEMBER TEICH AND SUPPORTED BY BOARD MEMBER TAYLOR TO APPROVE THE MINUTES OF JUNE 16, 2020 AS PRESENTED.
YEAS: ALL. MOTION CARRIED.**

OLD BUSINESS: - None

NEW BUSINESS:

1. SELECTION OF OFFICERS – CHAIRMAN, VICE-CHAIR, SECRETARY

IT WAS MOVED BY BOARD MEMBER TELESZ AND SUPPORTED BY BOARD MEMBER TAYLOR TO APPOINT RANDY HORTON AS CHAIRMAN, CHRISTOPHER EVELETH AS VICE-CHAIR AND MATTHEW GRUBB AS SECRETARY.

PUBLIC HEARINGS:

- | | |
|----------------------------|--|
| 1. APPLICANT: | JANIE & KEVIN YEAGER |
| LOCATION OF APPEAL: | 612 W STEWART STREET, Owosso, MI 48867 |
| PARCEL NUMBER: | 050-673-006-011-00 |
| PROPERTY ZONING: | R-1, ONE-FAMILY RESIDENTIAL DISTRICT |
| CASE #: | P2021-011 |

Chairman Horton opened the Public Hearing at 9:35 am.

Janie and Kevin Yeager stated the purpose of the variance request. When they bought the house in 2020, there was already a 4' high privacy fence close to the sidewalk. They stated the 8' sections near the driveway would be brought in to have driveway clearance.

REVIEW COMMENTS:

1. Will not be contrary to the public interest or the intent and purpose of this chapter.

Review Comment: The applicant is proposing to replace the existing fence which is too close to the right-of-way according to ordinance. The fence is required to be at least 19 feet from the public right-of-way in a front yard, which this lot is a corner lot placing the existing fence in the front yard. Since the fence will not add height and will comply otherwise, it is found that this will not be contrary to the intent of the chapter.

2. Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required.

Review Comment: The use is a permitted use within the R-1 District.

3. Is one that is unique and not shared by others.

Review Comment: This condition is applied across the community and is not unique to this property. In fact, there are a number of properties similarly situated adjacent and near this property with existing non-conforming fences.

4. Will relate only to the property that is under control of the applicant.

Review Comment: The variance will only relate to the property under the control of the applicant.

5. Is applicable whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Review Comment: The strict letter of the law will not prevent the owner of the property from reasonably using the property, and it would not be unnecessarily burdensome to comply.

6. Was not created by action of the applicant (i.e. that it was not self-created).

Review Comment: while the need for the variance is self-created, the owner is only trying to maintain the existing condition on the property by replacing the fence, which pre-dates the existing ordinance.

7. Will not impair an adequate supply of light and air to adjacent property or unreasonably increase congestion of public streets or increase the danger of fire or endanger the public safety.

Review Comment: The variance would not impair the supply of light or air to adjacent properties, create unreasonable congestion or endanger the public.

8. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district which the property of the applicant is located.

Review Comment: The variance would not impact property values in the immediate vicinity.

- 9. Is applicable whether a grant of the variance would be applied for would do substantial justice to the applicant as well as to other property owners in the area, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.**

Review Comment: Applying a lesser variance would possibly provide justice to the property owner, however other properties in the area have the same conditions with their fences being less than 19 feet from adjacent rights-of-way.

Special Conditions - When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:

- 1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not be deemed economic but shall be evaluated in terms of the use of a particular piece of land.**

Review Comment: It is our opinion that a practical difficulty or unnecessary hardship would not exist by meeting the strict letter of the code.

- 2. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district.**

Review Comment: There appear to be no exceptional or extraordinary circumstances or physical conditions with this property that do not generally apply to other properties in the same district

- 3. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.**

Review Comment: The variation would allow the property owner to maintain existing conditions on the property, something that many other properties in the area also maintain.

RECOMMENDATION

After review of the requested variance against the standards of the Michigan Zoning Enabling Act and the City of Owosso Zoning Ordinance, we are of the opinion that the requested variance for 612 W Stewart Street to allow the replacement of an existing fence, less than 19-feet from a right-of-way, be approved, for the following reasons:

- 1. The replacement would not be contrary to the intent of the ordinance;**
- 2. The variance would provide justice shared by other properties in the area;**

- 3. A variation is necessary for the preservation of a substantial property right possessed by others in the same district**

IT WAS MOVED BY BOARD MEMBER TELESZ AND SUPPORTED BY BOARD MEMBER TEICHTO ALLOW THE REPLACEMENT OF AN EXISTING FENCE, LESS THAN 19 FEET FROM A RIGHT-OF-WAY BE APPROVED AS RECOMMENDED BY THE CITY PLANNER.

AYES: BOARD MEMBERS TAYLOR, TEICH, TELESZ AND CHAIRMAN HORTON.

NAYS: NONE

RCV MOTION CARRIED

- 2. APPLICANT:** DEAN GAFFNER
LOCATION OF APPEAL: 1225 W STEWART STREET, Owosso, MI 48867
PARCEL NUMBERS: 050-606-001-016-00
PROPERTY ZONING: B-1, LOCAL BUSINESS DISTRICT CASE #: P2021-013

Dena Gaffner, Owner and Chandler Buck, Employee spoke about the need for a fenced in area for towing and storage of vehicles.

Justin Sprague comments:

The applicant property is located at 1225 Stewart and is an existing auto body repair shop which is a non-conforming use. The existing business has also been utilizing a vacant lot across Stewart Street to park customer vehicles either in the que to be repaired or waiting for customer pickup.

The applicant initially wanted to fence the vacant lot but was not permitted as that would be an expansion of the non-conforming lot. The applicant in now proposing to fence a portion of the existing lot with the business to secure customer vehicles and screen parking on the site. The subject property is zoned B-1, Local Business District where this use is a non-conforming use.

Justin Horvath, SEDP, spoke in favor of the variance and support for the business.

REVIEW COMMENTS

- 1. Will not be contrary to the public interest or the intent and purpose of this chapter.**

Review Comment: The applicant is proposing to add screening fence which is too close to the right-of-way according to ordinance. The fence is required to be at least 19 feet from the public right-of-way in a front yard, which this lot is a corner lot placing the existing fence in the front yard. Since the fence will prevent an expansion of a non-conforming use on a vacant lot, it is found that this will not be contrary to the intent of the chapter.

- 2. Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required.**

Review Comment: The use is a legal non-conforming use within the B-1 District.

- 3. Is one that is unique and not shared by others.**

Review Comment: This condition is applied across the community and is not unique to this property. In fact, there are a number of properties similarly situated adjacent and near this property with existing non-conforming fences.

4. Will relate only to the property that is under control of the applicant.

Review Comment: The variance will only relate to the property under the control of the applicant.

5. Is applicable whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Review Comment: The strict letter of the law will not prevent the owner of the property from reasonably using the property, but would be unnecessarily burdensome to comply.

6. Was not created by action of the applicant (i.e. that it was not self-created).

Review Comment: while the need for the variance is self-created, the owner is only trying to improve the existing condition on the property for both the community as well as improve the security of customer vehicles.

7. Will not impair an adequate supply of light and air to adjacent property or unreasonably increase congestion of public streets or increase the danger of fire or endanger the public safety.

Review Comment: The variance would not impair the supply of light or air to adjacent properties, create unreasonable congestion or endanger the public.

8. Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district which the property of the applicant is located.

Review Comment: The variance would not impact property values in the immediate vicinity.

9. Is applicable whether a grant of the variance would be applied for would do substantial justice to the applicant as well as to other property owners in the area, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

Review Comment: Applying a lesser variance would possibly provide justice to the property owner, however other properties in the area have the same conditions with their fences being less than 19 feet from adjacent rights-of-way.

Special Conditions - When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:

1. Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not

be deemed economic but shall be evaluated in terms of the use of a particular piece of land.

Review Comment: It is our opinion that a practical difficulty or unnecessary hardship would not exist by meeting the strict letter of the code.

- 2. Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district.**

Review Comment: There appear to be no exceptional or extraordinary circumstances or physical conditions with this property that do not generally apply to other properties in the same district

- 3. Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.**

Review Comment: The variation would allow the property owner to improve existing conditions on the property as well as prevent the expansion of an existing non-conforming use of a vacant lot.

RECOMMENDATION

After review of the requested variance against the standards of the Michigan Zoning Enabling Act and the City of Owosso Zoning Ordinance, we are of the opinion that the requested variance for 1225 Stewart Street to allow the replacement of an existing fence, less than 19-feet from a right-of-way, be approved, for the following reasons:

1. The replacement would not be contrary to the intent of the ordinance;
2. The variance would provide justice shared by other properties in the area;
3. A variation is necessary for the preservation of a substantial property right possessed by others in the same district
4. Fence is required to be maintained in high quality

IT WAS MOVED BY BOARD MEMBER TEICH AND SUPPORTED BY BOARD MEMBER TELESZ TO ALLOW A NEW FENCE, LESS THAN 19- FEET FROM THE RIGHT-OF-WAY BE APPROVED AS RECOMMENDED BY THE CITY PLANNER.

AYES: BOARD MEMBERS TAYLOR, TEICH, TELESZ AND CHAIRMAN HORTON.

NAYS: NONE

RCV MOTION CARRIED

OTHER BOARD BUSINESS: Board member Telesz discussed 229 S. Cedar Street and violations of variance. ALL in agreement to enforce conditions provided in variance. Will need to revoke variance if conditions not met.

PUBLIC COMMENTS AND COMMUNICATIONS: None

ADJOURNMENT:

IT WAS MOVED BY BOARD MEMBER TELESZ AND SUPPORTED BY BOARD MEMBER TAYLOR TO ADJOURN THE MEETING AT 10:05 A.M. UNTIL THE NEXT REGULARLY SCHEDULED MEETING ON TUESDAY, SEPTEMBER 21, 2021.

YEAS: ALL. MOTION CARRIED.

Matthew Grubb, Secretary

DRAFT