



Board of Zoning Appeals

November 1, 2023

Board Meeting

Minutes

5:30 PM

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### **VIDEO BROADCASTING & RECORDING**

The meeting videos are now being broadcast live and published on YouTube.com  
<https://www.youtube.com/@cityofmountvernon3369>

### **CALL TO ORDER**

| Attendee Name      | Title         | Status  |
|--------------------|---------------|---------|
| Michael Percy      | Chairman      | Present |
| Susie Simpson      | Member        | Present |
| William Smith      | Member        | Excused |
| Otho Eyster        | Alt. Member   | Excused |
| Tonya Boucher      | Vice-Chairman | Present |
| Kate Aryanata      | Alt. Member   | Present |
| Cynthia Cunningham | Member        | Excused |

Others in attendance: City Development Services Manager, Lacie Blankenhorn; City Law Director, P. Rob. Broeren; John, Burton; Donna Chafins; Joan B. Stallard; James R. Stallard;

### **MINUTES APPROVAL**

- Board of Zoning Appeals - Board Meeting - Oct 4, 2023 5:30 PM

|                  |                                   |
|------------------|-----------------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b>       |
| <b>MOVER:</b>    | Tonya Boucher, Vice-Chairman      |
| <b>SECONDER:</b> | Susie Simpson, Member             |
| <b>AYES:</b>     | Percy, Simpson, Boucher, Aryanata |
| <b>EXCUSED:</b>  | Smith, Eyster, Cunningham         |

### **BZA FILES**

- 2023-BZA-22 : Bylaws

Blankenhorn explained that the City Administration would like each Board & Commission to have Bylaws. The draft proposed by the Mayor is in the agenda packet for this Board to review and provide feedback and discuss during a future meeting.

Boucher made a motion to table the Bylaws review and discussion. Aryanata seconded and voting was AIF.

**RESULT:            TABLED****Next: 1/3/2024 5:30 PM**

- 3889 : 2023-Bza-23 7 feet side & rear fence

Burton, attorney for Stallard, did not swear in. He provided an opening statement, not as evidence, but a roadmap to the evidence. He pointed out his client is seeking an area variance only, in 2 parts; one for the side and rear yard fence to be 7' from the 6' code allowance, the second for the front yard fence to be 7' tall from the code allowed 3' height.

James R. Stallard (sworn in) was questioned by his attorney for 45 minutes. They established when the Stallard's purchased the 2-acre property at 202 S Edgewood RD in 1975, how they have used the property over the years and the changes they have experience with regard to the deer population. Exhibits A-F are photos of the installed fence that were submitted with the application. Percy asked for clarification that the fence has already been installed.

Exhibit G: Deed

Exhibit H: Aerial of subject property

The purpose of the fence is to keep deer off of the property. Deer were destroying vegetation on the property. Stallard tried caging his plants in the 90's.

The fence is north of the driveway. The property was surveyed.

Exhibit I: Document prepared by Stallard showing fence location on property.

Exhibit J: Bill for the fence installation

The property at 1117 E Vine ST was introduced for a variance they received for enclosing the garden in their front yard.

Exhibit K: Application for 1117 E Vine ST (Noonen property)

Exhibit L: Aerial photo of 1117 E Vine ST

Stallard discussed his fence with his next-door neighbors.

Exhibit M: A letter from the Kigers at 204 S Edgewood RD

Exhibit N: ODNR Statistics

Percy asked Broeren if the Board was supposed to have received all evidence prior to the meeting for review. Broeren said that is correct.

Burton said he has the right to present all evidence that he has.

Percy said the Board understands Stallard has deer in his yard and he would like a fence. Burton said that is exactly right.

Exhibit O: Violation letter sent to Stallards & Judgement Entry given by the Court earlier this year.

Burton wanted to enter the Codified Ordinances for fences as an exhibit. Broeren said they did not need to be submitted as evidence as they are the foundational documents.

Exhibit P: Survey showing right of way width

Stallard is the husband of Joan Stallard, listed property owner of the property, and is testifying on her behalf.

Exhibit Q: draft planning & zoning code

Broeren asked Stallard if he got a permit to build the fence. Stallard said he did not.

Burton objected, saying that didn't have anything to do with the granting of the requested variance. Broeren said it has a lot to do with it.

Broeren asked how many days it took to build the fence. Stallard said parts of 2 days, separated by more than a week.

Broeren asked Stallard if he met with Greg Bemiller while the fence was being built. Stallard said Bemiller came to his property when the contractor was in the process of finishing the fence. Broeren said the fence was still under construction, to which Stallard said correct. Broeren asked Stallard if he knew that Bemiller works for the City. Stallard said Bemiller told him who he was. Broeren asked Stallard what Bemiller told him about the fence. Stallard said Bemiller asked if they had a permit, to which Stallard said he didn't know he needed a permit. Stallard said Bemiller told him he could not complete the fence. Broeren asked Stallard if he followed Bemiller's instructions. Stallard said he did not. Stallard said he told Bemiller that the contractor was there and that he had waited 8 months for the contractor to come and that since he was there, Stallard wanted him to finish the fence and leave.



Broeren said, despite being instructed to stop, you didn't, to which Stallard said correct.

Broeren asked if he didn't stop because it wasn't convenient. Stallard said no, it was actually impossible to achieve the purpose of the fence with 1 and a half sides not completed.

Broeren asked Stallard if he was ever an official for the City of Mount Vernon. Stallard said he was a representative at Regional Planning from 1998-2006.

Broeren asked what Regional Planning does. Stallard said Regional Planning is supposed to deal with issues that have to do with water, sewer, stormwater, etc. It also dealt with things that have to do with zoning in the townships. He said the City of Mount Vernon did not refer zoning issues to the Regional Planning Commission while he was there.

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Broeren asked Stallard if thought to ask before having the fence built. Stallard said that is an interesting question. He said he talked about fencing out the deer from his property for years and no one ever said to him that he needed a permit. Broeren asked Stallard if he ever came to the City and ask anyone at the Engineer's Office if he needed a permit. Stallard said he didn't know he needed to ask. He said he did not ask.

Broeren said Stallard talked about the Noonens's property (1117 E Vine ST). Broeren said the fence is around their garden. Stallard said it is there to protect vegetation, correct. Broeren said Stallard pointed out on a map that the Noonens fence is over their property line, is that correct. Stallard said no that is not correct. Broeren asked what was shown. Stallard said it is an aerial image showing the position of the fence on the Noonens property and the fence goes across the right of way line. Broeren asked Stallard if he knows that it actually does that or if he has ever had it surveyed. Stallard said he can't vouch for the accuracy of the right of way lines.

Broeren asked how high the Noonens's fence is. Stallard said he believed the original application is for an 8' fence, but he has not measured it so he doesn't know. Broeren said they were only granted a 6' fence. The document submitted by Burton shows it is a 6' fence.

The board did not have any questions.

Blankenhorn read the staff report from the prior hearing on this property fence. November 2, 2022 Case: 2022-BZA-37 202 South Edgewood RD Parcel # 66-06582.000 A 7 feet high fence with 8 feet high gates was constructed on the subject property without a permit on or about August 24, 2022. The Property Maintenance Enforcement Officer stopped at the property the morning of August 25 and spoke with Mr. Stallard. The PMEO informed Mr. Stallard a notice had been sent the day before and informed him that a Zoning Permit is needed to construct a fence. Mr. Stallard said he would be in 8/26/2022 and indicated he would not stop the contractor from finishing the fence. The PMEO reported the fence was finished the afternoon of 8/25/2022.

A Zoning Permit was applied for on September 6, 2022 for a 7 feet high fence with 8 feet high gates. The application was denied on September 14, 2022 and the applicant was informed of the denial with an email generated from the City's iWorQ permit software. The applicant was advised they could apply for a variance from the Board of Zoning Appeals.

The application for a hearing with the Board of Zoning Appeals was submitted October 4, 2022.

James R. Stallard requests for Joan B. Stallard, Trustee a Variance for fence height in the R-1 Single Family District.

The Codified Ordinances of The City of Mount Vernon, Ohio §1178.02 Regulations states, "In any residential or O/I district no fence or wall shall exceed six feet in height and no fence shall exceed thirty-six inches in height between the street right-of-way line and the building setback lines."

§1160.02 Development Standards for R-1 Single Family District subsection (a)(3) states the minimum front yard shall be Thirty feet; forty feet for structures on lots fronting on major arterials and major collectors as designated by the Official Thoroughfare Plan.

Edgewood Road is classified as a Secondary Street and has a 40-feet wide right of way, which is substandard for the street classification.

§1155.13 Variance states in part, “no nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.”

In order for a fence to comply with City Code on the Stallard property, a fence within 40 feet of the front right of way line would need to be limited to 3 feet high. At a distance of forty feet or more from the front right of way line, a fence could be up to 6 feet high, and continue along the side and rear property lines.

Percy asked Broeren about how to handle the request, whether as a whole or separate. Broeren said that is at his discretion. Percy said there is no mention of a request for the 8’ tall gates. Broeren said they can be addressed separately.

Percy called for a motion from the Board for the height of the side & rear yard perimeter fence to be 1’ above the code, to be 7’ total.

Simpson made a motion to accept it as presented.

|                  |                                   |
|------------------|-----------------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b>       |
| <b>MOVER:</b>    | Susie Simpson, Member             |
| <b>SECONDER:</b> | Tonya Boucher, Vice-Chairman      |
| <b>AYES:</b>     | Percy, Simpson, Boucher, Aryanata |
| <b>EXCUSED:</b>  | Smith, Eyster, Cunningham         |

- approve a 7' front fence

Percy called for a motion to allow for the height of the front yard perimeter fence to be 7’, instead of the permitted 3’.

Boucher made a motion to approve.

|                  |                              |
|------------------|------------------------------|
| <b>RESULT:</b>   | <b>DEFEATED [2 TO 2]</b>     |
| <b>MOVER:</b>    | Tonya Boucher, Vice-Chairman |
| <b>SECONDER:</b> | Kate Aryanata, Alt. Member   |
| <b>AYES:</b>     | Simpson, Boucher             |
| <b>NAYS:</b>     | Percy, Aryanata              |
| <b>EXCUSED:</b>  | Smith, Eyster, Cunningham    |

- approve 8 feet tall gates

Stallard said there are 5 gates.

Percy confirmed that they are all 8 feet tall. Stallard said they are all in the sides.

Broeren asked if they are in front yard or in the side behind the house. Stallard said the first gate opening into the front yard is more than 100 feet from the right of way line. It opens into the front yard. The second gate is onto their terrace. Stallard used the image he submitted to indicate where the remaining gates are located. He noted one by the garage. He indicated a couple of them are wider. Others only allow pedestrian passage. He said there is a gate so that the neighbors can come and see them.

Percy said the request is for 5 gates that are 8 feet in height. Broeren noted they are behind the setback.

Simpson made a motion to approve.

|                  |                            |
|------------------|----------------------------|
| <b>RESULT:</b>   | <b>DEFEATED [1 TO 3]</b>   |
| <b>MOVER:</b>    | Susie Simpson, Member      |
| <b>SECONDER:</b> | Kate Aryanata, Alt. Member |
| <b>AYES:</b>     | Boucher                    |
| <b>NAYS:</b>     | Percy, Simpson, Aryanata   |
| <b>EXCUSED:</b>  | Smith, Eyster, Cunningham  |

## **ADJOURN**

### **- Adjourn Motion**

Simpson made a motion to adjourn the meeting, Boucher seconded and the meeting was adjourned at 6:34 PM

|                  |                                   |
|------------------|-----------------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>       |
| <b>MOVER:</b>    | Susie Simpson, Member             |
| <b>SECONDER:</b> | Tonya Boucher, Vice-Chairman      |
| <b>AYES:</b>     | Percy, Simpson, Boucher, Aryanata |
| <b>EXCUSED:</b>  | Smith, Eyster, Cunningham         |



**Board of Zoning Appeals** Meeting: 11/01/23 5:30 PM  
**City of Mount Vernon** Dept: **Board of Zoning Appeals**  
**Mount Vernon, OH 43050**

**TABLED**

Category: N/A  
 Prepared By: Lacie Blankenhorn  
 Initiator: Lacie Blankenhorn

**BZA FILE (ID # 3890)**

**DOC ID: 3890**

### **2023-BZA-22 : BYLAWS**

|                 |                            |
|-----------------|----------------------------|
| Item Number     | 2023-BZA-22                |
| Site Address    | N/A                        |
| Parcel Number   | N/A                        |
| Zoning District | N/A                        |
| Presented By    | Matthew T. Starr, Chairman |

Quick Guide to Codified Ordinance Sections (may not be inclusive):

1155.05(b) Board of Zoning Appeals: The Board of Zoning Appeals may adopt rules and regulations governing the conduct of its affairs that are consistent with this Zoning Ordinance.

Request: Review proposed bylaws for adoption

#### **COMMENTS - Current Meeting:**

Blankenhorn explained that the City Administration would like each Board & Commission to have Bylaws. The draft proposed by the Mayor is in the agenda packet for this Board to review and provide feedback and discuss during a future meeting.

Boucher made a motion to table the Bylaws review and discussion. Aryanata seconded and voting was AIF.

**RESULT:      TABLED**

**Next: 1/3/2024 5:30 PM**



## BYLAWS OF THE

*Board of Zoning Appeals for the City of Mount Vernon, Ohio*

### ARTICLE 1. NAME

The name of the board is *BOARD OF ZONING APPEALS*. (Ordinances 1155)

### ARTICLE 2. PURPOSE AND DUTIES (1155.08)

- (A) The Board of Zoning Appeals may adopt rules and regulations governing the conduct of its affairs that are consistent with the Zoning Ordinance of the City of Mount Vernon. All rules and regulations shall be filed with the Clerk of Council and made available for public inspection. The Board of Zoning Appeals shall annually choose from its membership a chairman and vice-chairman. (Ord. 2014-08. Passed 4-28-14.)
- (B) In exercising its duties, the Board may, as long as such action is in conformity with the terms of the bylaws and the Zoning Ordinance from which they were developed reverse or affirm, wholly or partly, or modify the order, requirements, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made. At such time, to that end shall have the powers of the Zoning Enforcement Officer from whom the appeal is taken. For the purpose of the bylaws according to the Zoning Ordinance the Board has the following specific responsibilities:
- (a) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, or determination made by the Zoning Enforcement Officer.
  - (b) To authorize such variances from the terms of the bylaws as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of the bylaws and/or zoning ordinance will result in unnecessary hardship, and so that the spirit of the bylaws and/or zoning ordinance shall be observed and substantial justice done.

- (c) To grant conditional use permits as specified in the Schedule of District Regulations and under the conditions specified in Section [1155.22](#) and such additional safeguards as will uphold the intent of the bylaws.
- (d) To hear and decide requests for the interpretation of the Zoning Map.
- (C) Members of the Board of Zoning Appeals shall serve without pay. (Ord. 1990-11. Passed 4-16-90.)
- (D) An individual board member may not act in an official capacity except through the action of the board.
- (E) Members are expected to let the City Clerk know if there are any conflicts of interest regarding the business set forth on the agenda or that may arise in a meeting.

### **ARTICLE 3. MEMBERSHIP**

- (A) The Board of Zoning Appeals shall consist of five (5) members to be appointed by the Mayor, and approved by City Council. The term of all members shall be five (5) years and their terms shall be so arranged that the term of one (1) member shall expire each year.
- (B) The Mayor shall also appoint two alternate members, with the approval of City Council, who may be called upon by the chairman to hear appeals if a member is unavailable or has a conflict of interest.
- (C) Each member shall serve until his successor is appointed and qualified.
- (D) Members of the Board shall be removable for nonperformance of duty, misconduct in office, or other reasonable cause by the Mayor upon written charges and after a public hearing has been held regarding such charges, a copy of the charges having been served upon the member so charged at least ten (10) days prior to the hearing either personally or by registered mail, or by leaving the same at his place of residence. The member shall be given an opportunity to be heard and answer such charges.
- (E) Vacancies shall be filled by appointment by the Mayor, with the approval of council, and shall be for the unexpired term.
- (F) Attendance - members are expected to let the City Clerk know if they are not able to attend the meetings.

- (G) The Board of Zoning Appeals may adopt rules and regulations governing the conduct of its affairs that are consistent with the bylaws and the zoning ordinances from which they were drawn. All rules and regulations shall be filed with the Clerk of Council and made available for public inspection.
- (H) The chair, or in his absence the vice-chair, shall advise Council by letter if any Board of Zoning Appeals member has absented himself from all meetings held during any period of ninety consecutive days or who has absented himself from a total of one-fourth of the regular meetings during a calendar year. Council shall consider removing such a member.
- (I) A member who seeks to resign from the Commission shall submit a written resignation to their appointing authority. If possible, the resignation should allow for a thirty day notice so the appointing authority can appoint a replacement.

## **ARTICLE 4. OFFICERS**

- (A) The officers of the board shall consist of the Chair and the Vice-chair.
- (B) The Board of Zoning Appeals shall annually choose from its membership a chairman and vice-chairman.

## **ARTICLE 5. DUTIES OF OFFICERS**

- (A) The Chair shall preside at board meetings and approve each final meeting agenda.
- (B) In the absence of the Chair, the Vice-chair shall perform all duties of the Chair.

## **ARTICLE 6. AGENDAS**

- (A) Upon receipt of an application for a zoning appeal, which is accompanied by the material required by the provisions of subsection [1172.1155.23](#) of the codified ordinances of the City of Mount Vernon, the Zoning Enforcement Officer or his designee shall place the application on the agenda for the Board of Zoning Appeals at its next regular meeting following 30 days from the date the application is filed. The Zoning Enforcement Officer (or designee) shall further cause to be published in a newspaper of general circulation in the City, a public notice of the scheduled hearing of the application together with a general description of the nature of the application. The applicant shall be notified by

mail of the date of the hearing.

(B) Agendas are published on the City's website.

## ARTICLE 7. MEETINGS

(A) Board meetings shall comply with the Ohio Open Meetings Act (ORC 121.22).

(B) Board meetings shall be governed by Robert's Rules of Order.

(C) Board may not conduct an executive session without the approval of the Law Director.

(D) The Board shall meet monthly on the first and third Wednesday of the month at 5:30 p.m. in Council Chambers (40 Public Square) or when it is required to meet in order to comply with a legal deadline.

(E) No later than December of each year, the Board shall adopt a schedule of the meetings for the upcoming year, including makeup meeting dates for the holidays and canceled meetings.

(F) The Chair may call a special meeting, and the Chair shall call a special meeting if requested by three or more members. The call for the meeting shall state the purpose of the meeting.

(G) Four members constitute a quorum.

(H) If a quorum for a meeting does not convene within twenty (20) minutes of the posted time for the meeting, then the meeting may not be held.

(I) To be effective, a board action must be adopted by an affirmative vote of the majority of the members present.

(J) The Board of Zoning Appeals shall/may allow time for public comments during the meeting. The Chair may limit the length of time of any individual speaker.

(K) The Zoning Enforcement Officer (or designee) shall prepare the Board meeting minutes. The minutes of each Board meeting must include the vote of each member on each item before the Board and indicate whether a member is absent or failed to vote on an item.

(L) The city shall retain documents of the Board of Zoning Appeals pursuant to its written records retention policy as approved by the Ohio History Connection.



(M)Each person and Board member attending a Board meeting should act appropriately and professionally.

## ARTICLE 8. PARLIAMENTARY AUTHORITY

The rules contained in the current edition of Robert's Rules of Order shall govern the board in all cases to which they are applicable, except when inconsistent with these bylaws.

## ARTICLE 9. AMENDMENT OF BYLAWS

A bylaw amendment is not effective unless approved by a majority of the members of the Board of Zoning Appeals. Furthermore, amendments may not apply to statutory requirements of the Ohio Revised Code.

The Board of Zoning Appeals bylaws were approved by the Board of Zoning Appeals meeting held on \_\_\_\_\_(date/time) at CITY HALL, 40 PUBLIC SQUARE, MOUNT VERNON, OHIO (location) .

*(Signature of Board of Zoning Appeals Chair)*

*Board of Zoning Appeals members present:*



**Board of Zoning Appeals** Meeting: 11/01/23 5:30 PM  
**City of Mount Vernon Dept: Board of Zoning Appeals**  
**Mount Vernon, OH 43050**

**ADOPTED**

Category: N/A  
 Prepared By: Lacie Blankenhorn  
 Initiator: Lacie Blankenhorn

**BZA FILE (ID # 3889)**

**DOC ID: 3889**

## **2023-BZA-23 : 202 S EDGEWOOD RD - VARIANCE FOR FENCE HEIGHT**

|                 |                   |
|-----------------|-------------------|
| Item Number     | 2023-BZA-23       |
| Site Address    | 202 S Edgewood RD |
| Parcel Number   | 66-06582.000      |
| Zoning District | R-1               |
| Presented By    | Joan B Stallard   |

Quick Guide to Codified Ordinance Sections (may not be inclusive):  
 1178 Fences and Hedges  
 1160.02(3) Development Standards (R-1) Minimum front yard

Request: 7' high perimeter fence, as detailed in application packet

### **COMMENTS - Current Meeting:**

Burton, attorney for Stallard, did not swear in. He provided an opening statement, not as evidence, but a roadmap to the evidence. He pointed out his client is seeking an area variance only, in 2 parts; one for the side and rear yard fence to be 7' from the 6' code allowance, the second for the front yard fence to be 7' tall from the code allowed 3' height.

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James R. Stallard requests for Joan B. Stallard, Trustee a Variance for fence height in the R-1 Single Family District.

The Codified Ordinances of The City of Mount Vernon, Ohio §1178.02 Regulations states, “In any residential or O/I district no fence or wall shall exceed six feet in height and no fence shall exceed thirty-six inches in height between the street right-of-way line and the building setback lines.”

§1160.02 Development Standards for R-1 Single Family District subsection (a)(3) states the minimum front yard shall be Thirty feet; forty feet for structures on lots fronting on major arterials and major collectors as designated by the Official Thoroughfare Plan.

Edgewood Road is classified as a Secondary Street and has a 40-foot wide right of way, which is substandard for the street classification.

§1155.13 Variance states in part, “no nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance.”

In order for a fence to comply with City Code on the Stallard property, a fence within 40 feet of the front right of way line would need to be limited to 3 feet high. At a distance of forty feet or more from the front right of way line, a fence could be up to 6 feet high, and continue along the side and rear property lines.

Percy asked Broeren about how to handle the request, whether as a whole or separate. Broeren said that is at his discretion. Percy said there is no mention of a request for the 8’ tall gates. Broeren said they can be addressed separately.

Percy called for a motion from the Board for the height of the side & rear yard perimeter fence to be 1’ above the code, to be 7’ total.

Simpson made a motion to accept it as presented.

|                  |                                                            |
|------------------|------------------------------------------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b>                                |
| <b>MOVER:</b>    | Susie Simpson, Member                                      |
| <b>SECONDER:</b> | Tonya Boucher, Vice-Chairman                               |
| <b>AYES:</b>     | Michael Percy, Susie Simpson, Tonya Boucher, Kate Aryanata |
| <b>EXCUSED:</b>  | William Smith, Otho Eyster, Cynthia Cunningham             |



City of Mount Vernon, Ohio  
Board of Zoning Appeals

Request for Hearing

RECEIVED

OCT 03 2023

CITY ENGINEERING DEPARTMENT  
MOUNT VERNON, OHIO

*jai*

**Applicant's Information**

Owner's Name, Address and Phone

Joan B. Stallard, Trustee 202 South Edgewood Road, Mount Vernon, OH 43050 (740) 392-2901

Agent's Name, Address and Phone

James R. Stallard 202 South Edgewood Road, Mount Vernon, OH 43050 (740) 504-7675

**Site Information**

Site Address

202 South Edgewood Road, Mt. Vernon, OH

Legal Description

12 6 2 N PT of 1 2.00A

Parcel Number

66-06582.000

Deed Volume and Page Number

Vol. 1423, Page 479

Zoning District

R-1

Existing use of property

Residence

Proposed use of property

Unchanged

**Hearing Request**

**Type of Hearing Requested**

☒ Variance  
Use

☐ Conditional Use

☐ Appeal of Decision

☐ Map Interpretation

☐ Substantially Similar

In the following section, please list a brief description of the request. Narrative statements and any additional documents or information required by the Zoning Code and Chapter 1155 should be attached to this application as separate sheets.

Request:

1. The height of the side and rear yard perimeter fence be extended by one foot to a height of seven (7) feet over the permitted six (6) feet.
2. The height of the front yard perimeter fence be also extended to a height of seven (7) feet over the permitted three (3) feet as situated east of the existing 20-foot South Edgewood Road right-of-way.

See attached Narrative Statements.

I hereby certify that the information submitted on this application and on any sketches, drawings or other documents submitted with this application is true and exact.

Date:

*October 3, 2023*

By:

*Joan B. Stallard*

**Status of Application**

Filing Date

Case Number

Hearing Date

Fee deposit

~~\$100.00~~

Date Paid

Receipt Number

Status of Board's Action

☐ Approved

☐ Denied

Fee is waived by Court Order, Knox County Common Pleas Court,  
Case No. 22 AP 12-0323

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)

### Narrative Statements

*establishing and substantiating that the variance conforms to the following standards:*

           1) The granting of the variance shall be in accord with the general purpose and intent of the regulations imposed by this Zoning Ordinance on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare.

The City Ordinance Chapter 1178 permits and regulates fences in Residential districts. Fences are a permitted use up to six (6) feet in height, see Sections 1178.01 and .02. From these regulations, two area variances are requested:

Request 1: The height of the side and rear yard perimeter fence be extended by one foot to a height of seven (7) feet over the permitted six feet.

Request 2: The height of the front yard perimeter fence be also extended to a height of seven (7) feet over the permitted three (3) feet as situated east of the existing 20-foot South Edgewood Road right-of-way.

These requests are for area variances. Codified Ordinances 1155.13; 1155.14 do not provide for area variances. However, the Ohio Supreme Court had mandated municipal corporations permit area variances based on the Board of Zoning Appeals' consideration of practical difficulties based on specific factors as cited by the Court, see *Duncan v. Middlefield* (1986), 23 Ohio St.3d 83; *Barr v. Monroe Twp. Bd. of Zoning Appeals* (1990), Ohio App. Lexis, Fifth Dist. Ct. of App. – Licking County.

Also the City of Mount Vernon Planning and Zoning Code, Partial Draft - February 23, 2023, Section 1103.07(d)(1) provides for areas variances and lists the factors to consider. Footnote 50 recognizes the necessity to comply with case law, copy attached.

Finally, regarding the question of whether the variance is injurious or detrimental to the public welfare, consider the following:

This Board already approved a similar application in 2014 for the Noonan residence located at 1117 E. Vine Street, copy attached.

At the applicant's prior hearing in October 2022, the Board ruled that it would not or could not consider the Noonan decision. The 2022 record provides: "Percy said, as it was pointed out by the zoning enforcement officers, 1155.13 prior approvals are not to be considered" (Tr. Packet 3.1, Page 8).

Section 1155.13 states:

The Board of Zoning Appeals may authorize upon appeal in specific cases such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Zoning Ordinance would result in unnecessary hardship. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience, financial hardship or profit, but only where strict application of the provisions of this Zoning Ordinance would result in unnecessary hardship. (Emphasis added)

That provision applies only to nonconforming uses and not variances. Again, the application is only for an area variance based on practical difficulties. For purposes of zoning law, nonconforming uses and variances are very distinct and have separate uses. Both are defined by MVC Section 1152.01 (133) and (191), respectively.

Nonconforming uses apply to particular and identifiable land uses existing prior to the enactment of zoning law which would no longer permit that use under the newly enacted zoning. On the other hand, variances apply to land uses occurring after the enactment of zoning regulations. Other than noting this distinction, there is another important principle. Nonconforming uses are revoked and may no longer continue after the particular land use is abandoned, R.C. 713.15. This explains the purpose and reasoning of Section 1155.13, which has



no application to variances. However, variances run with the land regardless of change of ownership, *Scarnecchia v. Austintown Twp.*, 2005. Therefore, this Board must consider and explain any deviation from its Vine Street decision.

Citing the Vine Street fence variance has the purposes of (1) evidencing this Board has considered and approved similar fence variances; and (2) a reasonable comparison of the Vine Street fence to that of applicant shows a significantly less obvious and intentionally aesthetically pleasing fence for both applicant's property and its adjoining properties. In fact, both of applicant's adjoining neighbors approved applicant's fence in writing.

**\_\_\_\_\_ 2) The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district.**

The area variance is for a fence only, which is a permitted use.

**\_\_\_\_\_ 3) Describe the special circumstances or conditions, applicable to the land or buildings for which the variance is sought, which are peculiar to such land or buildings and do not apply generally to land or buildings in the area, and which are such that the strict application of the provisions of this Zoning Ordinance would deprive the applicant of the reasonable use of such land or building. There must be deprivation of beneficial use of land.**

This question is not applicable to area variance requests. The proper question should be:

Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to land or structures in the same district.

Answer: Applicant's property abuts Pleasant Township on the east, south and approximately 20 feet on the west. This area is heavily wooded to the east and south. Being at the very corner of the City boundary combined with a low residential density of applicant's residence location within the City makes the applicant's property atypical from the City's higher density residential neighborhoods.

**4) Explain the proof of hardship created by the strict application of this Zoning Ordinance.**

Undue hardship does not apply to area variances. The Board can consider practical difficulties.

- A. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or proximity to nonconforming and inharmonious uses, structures or conditions.

Answered in #2 above.

- B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.

Landscaping aesthetics and prevention of property damage are common land uses and purposes. The control or prevention of deer intrusion is not possible without a high fence. The Board has already acknowledged this in the Noonan approved fence variance.

- C. Whether the variance is the minimum necessary to make possible the reasonable use of the land or structures.

Fencing is already a permitted use. Applicant is asking for extensions of height, not a new land use. Only a fence designed specifically for deer nuisance prevention is requested.

- D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance.

There is no effect on the character of the neighborhood, which has low density unlike the Noonan property. The applicant's neighbors have approved the fence.

- E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer or trash pickup.

Does not apply.

- F. Whether special conditions or circumstances exist as a result of actions of the applicant (actions of the applicant shall not include the purchase or acquisition of the property).

The applicant is not responsible for the deer population or its location.

- G. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.

Applicant has already tried other methods of deer control but without success. Only fencing can and has worked as an effective barrier.

- H. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance.

The grant of the area variance is only an extension of a permitted use, i.e. fence, and only the variance can provide a reasonable remedy against the ongoing deer nuisance.

- I. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

The applicant's request is specific and limited to addressing the deer nuisance as was the basis for the request for a variance for the Noonan property.

- J. Whether a literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code.

Applicant's request is only for a reasonable fence height extension of the permitted use, which would be minimally noticeable to the public but obvious to the deer population.

Applicant's request is limited only to remedying the deer nuisance.

**\_\_\_\_\_ 5) The granting of the variance is necessary for the reasonable use of the land or building, and the variance as granted is the minimum variance that will accomplish this purpose.**

Answered in #4 above.

\_\_\_\_\_ 6) The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.

Answered in #4 above.

\_\_\_\_\_ 7) The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

Answered in #4 above.

Applicant's Statement October 3, 2023

James R. and Joan B. Stallard purchased 202 South Edgewood Road in 1975. Joan B. Stallard, Trustee became owner of the property in 2013. We have inhabited our residential property continuously. Our dwelling was constructed about 1903 and came to us with highly desired mature shrubs, perennials and extensive ground covers. Maintaining and improving the landscape in ways compatible with abutting properties was and remains a central component of our enjoyment of my property.

My property abuts unincorporated Knox County on the east, south and for about 20 feet on the west. A deer population of unknown size now infests the heavily wooded properties to the east and south. We have encountered or observed deer grazing or browsing in my yard almost daily. We have observed as many as 35 deer at one time in my less than one-half acre back yard. Our neighbor to the north reported seeing a herd of 15 there in August of 2022.

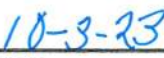
Until about 1985, we rarely observed deer. Thereafter, the deer population exploded with each doe typically dropping twins or triplets yearly. It rapidly became impossible to have unprotected plants in our yard, as the deer devoured every green plant, especially in winter and spring. What they left uneaten, they trampled or damaged by breaking or rubbing. No lily, azalea, rhododendron, hyacinth, iris, crocus, blood root, wild geranium, miniature ginseng, etc. could be left unprotected. Leaves chewed from the lower limbs of maples, gums, beeches, flowering crabapples, yews, etc. produced an unsightly browse line. When we had yellow delicious apple trees, deer climbed into them to eat the ripe apples. In 2021 consumption of supposedly "deer resistant" peonies began; one peony growing undisturbed for at least 50 years was eaten and killed. Deer feces decorated my lawn year around.

In the early 2000s bow hunters with "damage permits" killed deer on my property, but that hunting made no detectible change in the population. Deer repellants are ineffective in rainy weather, as they must be reapplied after each rain. Contrary to the widely circulated notion, my experience is that hungry deer cannot be trained with repellants to leave any green plant uneaten. However, physical barriers, such as self-supporting fencing, do exclude deer and allow shrubs, flowers and lawns to exist undamaged. We began enclosing our most vulnerable plants within fencing in the 1990s and eventually caged nearly all of our shrubs and perennials. Nevertheless, those physical barriers around individual or groupings of plants not only made it extremely difficult to tend either them or areas around them, they also reduced our enjoyment of those vulnerable plants and the landscape they help create. Only the construction of a fence designed to control deer can obviate the growing deer nuisance we are experiencing.

Consequently, because of the practical difficulties we have encountered in the use of my property, I apply for a variance for a deer-excluding fence for my property, placed as shown on the attached aerial map. The fence was constructed with four-inch, pressure treated posts and woven wire and stands approximately seven feet high with five eight-foot gates. As shown on the attached map, fence posts on my property follow the surveyed property line (blue), except east of the right-of-way line (red), north of the driveway, and at the south eastern corner of the garage (all of which are shown by black lines). Only this fence will be effective in controlling the deer, and it is also minimally visible having been specifically designed and built to blend aesthetically into my property.

Since completion of the fence in August 2022, deer have been excluded from the enclosed area of my property

  
Joan B. Stallard, Trustee

  
Date

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)



FILED  
KNOX COUNTY  
IN THE COURT OF COMMON PLEAS  
KNOX COUNTY, OHIO

2023 MAY 30 AM 10:42

CHRISTY MILLIGAN STATION  
CLERK OF COURTS

JOAN B. STALLARD, TRUSTEE, et al.,  
Appellants

VS.

CASE NO. 22AP12-0323

CITY OF MOUNT VERNON BOARD  
OF ZONING APPEALS OHIO  
Appellees

**JUDGMENT ENTRY**

This matter came before the Court on May 22, 2023, for Oral Hearing on the Appeal filed December 2, 2022.

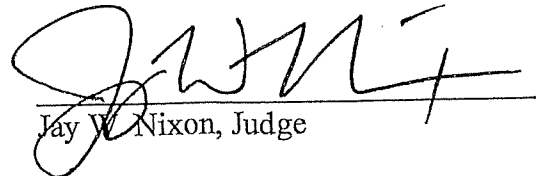
The following parties were present for the hearing: Mount Vernon City Law Director P. Robert Broeren, on behalf of the City of Mount Vernon, Board of Zoning Appeals; and Joan B. Stallard, Trustee, and James R. Stallard, Appellants, appearing with Attorney Jon K. Burton.

By agreement of the parties, the Court hereby **FINDS** and **ORDERS**:

The Appeal filed December 2, 2022, is hereby **DISMISSED**, without prejudice.

The City of Mount Vernon (the "City") shall give sixty (60) days advance notice of any anticipated zoning enforcement action regarding the fence erected on the property located at 202 South Edgewood Road, Mount Vernon, Ohio 43050, to James R. Stallard and Joan B. Stallard (the "Stallards"). If the Stallards file an application for a zoning variance within 60 days of receipt of such notice, then the City shall not take any enforcement action regarding the fence, and any enforcement action already initiated by the City shall be immediately stayed, until final resolution of said application, including any appeals. The City shall not charge the Stallards any filing fees for said application.

The costs of this action shall be paid from the deposit(s). Any additional fees are hereby waived.

  
Jay W. Nixon, Judge

Cc: Jon K. Burton, Attorney for Appellants  
City of Mount Vernon Board of Zoning Appeals Ohio

JAY W. NIXON,  
JUDGE  
KNOX COUNTY  
PROBATE/JUVENILE COURT  
111 EAST HIGH ST.  
MOUNT VERNON, OH 43050  
740-393-6798

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)

close c



Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)



**Mount Vernon**

*An Innovative Community; Authentically Hometown*

## City of Mount Vernon Planning and Zoning Code

Partial Draft – February 23, 2023

- G. If the BZA fails to make a recommendation within the established timeframe, or an extended timeframe approved by the applicant, the application shall be deemed denied.
- H. The decision of the BZA shall become effective immediately.
- I. In approving a variance, the BZA may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to ensure compliance with the standards of this section and the purposes of this code. Any conditions established by the BZA shall relate directly to the requested variance.
- J. Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of Chapter <>.

(d) **Variance Review Criteria**<sup>50</sup>

Variances shall not be granted on the grounds of convenience, financial hardship or profit, but only where strict application of the provisions of this Zoning Ordinance would result in a practical difficulty or unnecessary hardship as defined in more depth below.

(1) **Area or Dimensional Variance**

Where an applicant is seeking an area or dimensional variance, the following factors shall be considered and weighed by the BZA to determine if a practical difficulty exists that would justify approval of the variance. However, no single factor listed below may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts. The application for a variance shall not be based exclusively upon a desire to increase the value or income potential of the parcel of land or any structures or uses thereupon. The BZA shall take into consideration:

- A. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or proximity to nonconforming and inharmonious uses, structures or conditions;
- B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- C. Whether the variance is the minimum necessary to make possible the reasonable use of the land or structures;
- D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
- E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, or trash pickup;
- F. Whether special conditions or circumstances exist as a result of actions of the applicant (actions of the applicant shall not include the purchase or acquisition of the property);
- G. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
- H. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance;
- I. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district; and
- J. Whether a literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code.

(2) **Use Variance**

In order to grant a use variance, the BZA shall determine that strict compliance with the terms of this code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

<sup>50</sup> This is a greatly expanded set of standards for both area/dimensional variances and use variances that builds of the current standards but is also reflective of standards found in case law. The area/dimensional variance is based off of a finding of a practical difficulty while the use variance is based off of a finding of an unnecessary hardship.



ALL-STATE LEGAL®  
**EXHIBIT**



6605288000  
1.00000Ac.

66ROW  
Ac.

6605335000  
1.00000Ac.

5900026000  
1.04000Ac.

6606083000  
3.37000Ac.

6606582000  
2.00000Ac.

5900184000  
2.62000Ac.

5902203000  
3.40000Ac.

5902226000  
.83000Ac.

2021 Aerial Photo

## Legend

- Parcel Line
- Rd. ROW Line
- Towship Line







ALL-STATE LEGAL®  
EXHIBIT  
A-F

4.2.a

A

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)



B





C





D















City of Mount Vernon, Ohio  
Board of Zoning Appeals

Request for Hearing



| Applicant's Information                                                                                                                                                                                                                            |                                            |                                                                                                 |                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------|
| Owner's Name, Address and Phone<br>John and Tonya Noonan 1117 E. Vine St. 397-4276                                                                                                                                                                 |                                            |                                                                                                 |                        |
| Agent's Name, Address and Phone<br>Tonya Noonan 1117 E. Vine St. 397-4276                                                                                                                                                                          |                                            |                                                                                                 |                        |
| Site Information                                                                                                                                                                                                                                   |                                            |                                                                                                 |                        |
| Site Address<br>1117 East Vine Street                                                                                                                                                                                                              |                                            | Legal Description<br>Grandview 12                                                               |                        |
| Parcel Number<br>66-05290.00                                                                                                                                                                                                                       | Deed Volume and Page Number<br>966 706-707 | Zoning District<br>R-1                                                                          |                        |
| Existing use of property<br>ugly, ineffective temporary fence to protect edibles from deer.                                                                                                                                                        |                                            | Proposed use of property<br>Beautiful, effective 8 foot wooden, cow/hog visible fence structure |                        |
| Hearing Request                                                                                                                                                                                                                                    |                                            |                                                                                                 |                        |
| Type of Hearing Requested                                                                                                                                                                                                                          |                                            |                                                                                                 |                        |
| <input checked="" type="checkbox"/> Variance <input type="checkbox"/> Conditional Use <input type="checkbox"/> Appeal of Decision <input type="checkbox"/> Map Interpretation <input type="checkbox"/> Substantially Similar Use                   |                                            |                                                                                                 |                        |
| In the following section, please list a brief description of the request. Narrative statements and any additional documents or information required by the Zoning Code and Chapter 1155 should be attached to this application as separate sheets. |                                            |                                                                                                 |                        |
| Request:<br>Request variance for attractive, highly transparent eight foot high structure to protect edibles from deer. (see attached)                                                                                                             |                                            |                                                                                                 |                        |
| I hereby certify that the information submitted on this application and on any sketches, drawings or other documents submitted with this application is true and exact.                                                                            |                                            |                                                                                                 |                        |
| Date: Aug 13, 2014                                                                                                                                                                                                                                 |                                            | By: [Signature]                                                                                 |                        |
| Status of Application                                                                                                                                                                                                                              |                                            |                                                                                                 |                        |
| Filing Date<br><b>RECEIVED</b><br><b>AUG 13 2014</b><br><b>DEVELOPMENT SERVICES</b><br><b>MOUNT VERNON, OH</b>                                                                                                                                     |                                            | Case Number<br>2014-Bd Zon App-11                                                               |                        |
|                                                                                                                                                                                                                                                    |                                            | Hearing Date<br>September 3, 2014                                                               |                        |
|                                                                                                                                                                                                                                                    |                                            | Fee deposit<br>\$75.00                                                                          | Date Paid<br>8/13/2014 |
|                                                                                                                                                                                                                                                    |                                            | Receipt Number<br>2404                                                                          |                        |
| Status of Board's Action                                                                                                                                                                                                                           |                                            |                                                                                                 |                        |
| <input type="checkbox"/> Approved <input type="checkbox"/> Denied                                                                                                                                                                                  |                                            |                                                                                                 |                        |

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)





This is my garden . The deer were able to jump a 6 foot fence, and destroyed the green beans and swiss chard. They damaged the carrots, cucumbers, tomatoes and peas.



The deer knocked down and tore holes in the "deer fence" near the sidewalk and tromped through the beds to take more of the food I am using to feed my family of five.







The deer have gone under the "deer fence", hence the unsightly supports to keep the bottom impassable.



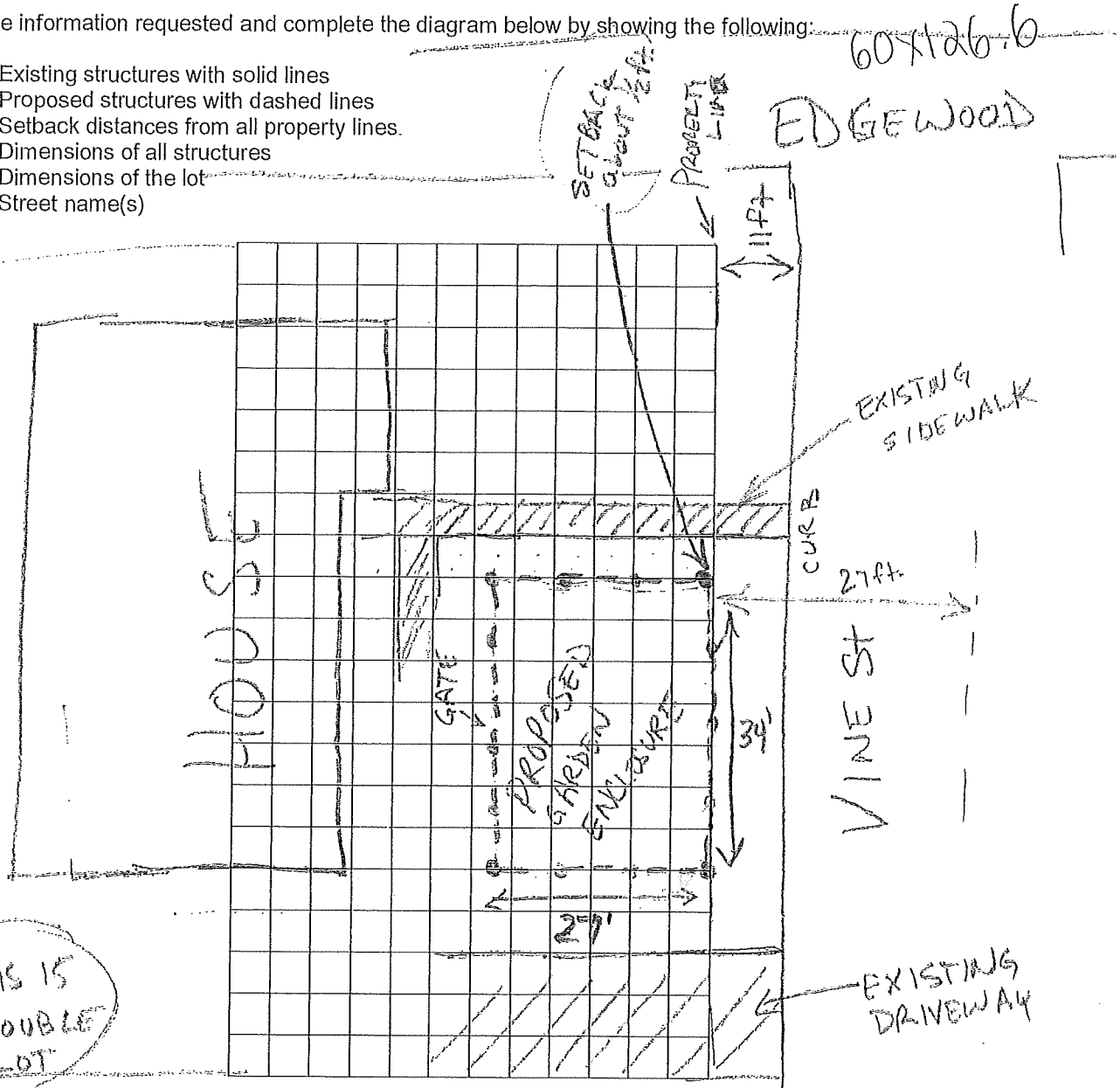
# City of Mount Vernon Zoning Permit Sketch

Site Address 1117 East Vine Street Mount Vernon, OH

## Instructions to Applicant

Supply all the information requested and complete the diagram below by showing the following:

1. Existing structures with solid lines
2. Proposed structures with dashed lines
3. Setback distances from all property lines.
4. Dimensions of all structures
5. Dimensions of the lot
6. Street name(s)



Street Name Vine

I hereby certify that the information submitted on this sketch and/or other attached drawings and documents is true and correct.

By \_\_\_\_\_  
Date \_\_\_\_\_

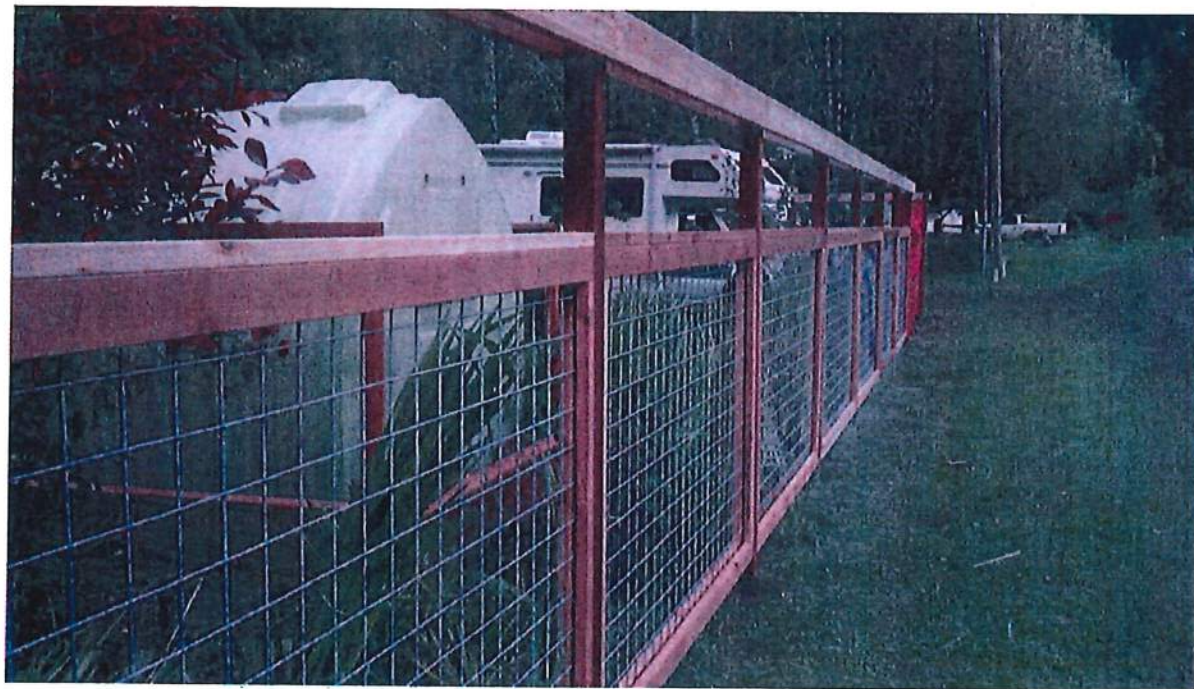
### Zoning Enforcement Officer Action

☐ Approved ☐ Disapproved

By \_\_\_\_\_  
Date \_\_\_\_\_



If it please the Court, I would be happy to use this very minimalist type of permanent fence, and plant attractive flowers and bushes to make it pleasing to the eye. Or, the one below for something more civilized looking. The next two photos are also some structures with high visibility that would exclude deer.













City of Mount Vernon, Ohio  
Application for Zoning Permit

Permit No. \_\_\_\_\_

| Application                                                                                                                                                                                                                                                                                             |                            |                                                                                                                                    |                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Owner's Name, Address and Phone<br>John and Tonya Noonan 1117 East Vine St. 397-4276                                                                                                                                                                                                                    |                            |                                                                                                                                    |                                                                                                                              |
| Contractor's Name, Address and Phone<br>John Noonan 1117 East Vine St. 397-4276                                                                                                                                                                                                                         |                            |                                                                                                                                    |                                                                                                                              |
| Applicant's Name, Address and Phone<br>Tonya Noonan 1117 East Vine St. 397-4276                                                                                                                                                                                                                         |                            |                                                                                                                                    |                                                                                                                              |
| Site Information                                                                                                                                                                                                                                                                                        |                            |                                                                                                                                    |                                                                                                                              |
| Site Address<br>1117 East Vine Street                                                                                                                                                                                                                                                                   |                            | Side Street (if corner lot)<br>Edgewood Road                                                                                       |                                                                                                                              |
| Legal Description<br>Grandview 12                                                                                                                                                                                                                                                                       |                            | Parcel Number<br>66-05290.000                                                                                                      | Deed Volume and Page Number<br>966 106-107                                                                                   |
| Zoning District<br>R-1                                                                                                                                                                                                                                                                                  | Flood Zone<br>66-05289.000 | <input type="checkbox"/> Floodway <input type="checkbox"/> AE Zone <input type="checkbox"/> A Zone <input type="checkbox"/> X Zone |                                                                                                                              |
| Historic District<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                |                            | Status of Historic Review Commission's Action<br><input type="checkbox"/> Approved <input type="checkbox"/> Denied Case Number:    |                                                                                                                              |
| Project Information                                                                                                                                                                                                                                                                                     |                            |                                                                                                                                    |                                                                                                                              |
| Description of Proposed Work<br>An attractive 8 foot tall structure with wooden frame and very high visibility cow/hog fence to prevent deer destruction of edibles.                                                                                                                                    |                            |                                                                                                                                    |                                                                                                                              |
| Existing use of property<br>Raised beds, ugly temporary fence deer knock over and shred and destroy                                                                                                                                                                                                     |                            |                                                                                                                                    |                                                                                                                              |
| Proposed use of property<br>Beautiful fence with landscaping that is effective.                                                                                                                                                                                                                         |                            |                                                                                                                                    |                                                                                                                              |
| Parking spaces/loading berths                                                                                                                                                                                                                                                                           | Building heights           | Dwelling units                                                                                                                     |                                                                                                                              |
| State Approval                                                                                                                                                                                                                                                                                          | Date                       | Approval Number                                                                                                                    | <input type="checkbox"/> Full approval<br><input type="checkbox"/> Partial approval<br><input type="checkbox"/> Not required |
| I hereby certify that the information submitted on this application and on any sketches, drawings or other documents submitted with this application is true and exact. This permit shall expire and may be revoked if work has not begun within six months or substantially completed within one year. |                            |                                                                                                                                    |                                                                                                                              |
| Date: Aug 13, 2014                                                                                                                                                                                                                                                                                      |                            | By: [Signature]                                                                                                                    |                                                                                                                              |
| Status of Application                                                                                                                                                                                                                                                                                   |                            |                                                                                                                                    |                                                                                                                              |
| <input checked="" type="checkbox"/> Application rejected Date: 8/13/14 By: [Signature] Reason(s): Exceeds height requirement                                                                                                                                                                            |                            |                                                                                                                                    |                                                                                                                              |
| <input checked="" type="checkbox"/> Referred to Board of Appeals Status of Board's Action<br><input type="checkbox"/> Approved <input type="checkbox"/> Denied Case Number:                                                                                                                             |                            |                                                                                                                                    |                                                                                                                              |
| <input type="checkbox"/> Application approved                                                                                                                                                                                                                                                           |                            |                                                                                                                                    |                                                                                                                              |
| Comments                                                                                                                                                                                                                                                                                                |                            |                                                                                                                                    |                                                                                                                              |
| Date:                                                                                                                                                                                                                                                                                                   |                            | By:                                                                                                                                |                                                                                                                              |
| Fee Calculation                                                                                                                                                                                                                                                                                         |                            |                                                                                                                                    |                                                                                                                              |
| Estimated Cost                                                                                                                                                                                                                                                                                          |                            | Base Fee                                                                                                                           |                                                                                                                              |
|                                                                                                                                                                                                                                                                                                         |                            | Park Development Fee                                                                                                               |                                                                                                                              |
|                                                                                                                                                                                                                                                                                                         |                            | Total Fee                                                                                                                          |                                                                                                                              |

Updated 7-01-2013

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)

City of Mount Vernon, Ohio  
**Board of Zoning Appeals**



**Minutes of Meeting**  
 Case 2014-BdZonApp-11  
 1117 East Vine Street

The Board of Zoning Appeals of the City of Mount Vernon, Ohio, convened for a meeting September 3, 2014, at 5:30 pm in the Council Chambers of City Hall. Consideration of request for variance of fence height requirements.

**Board Members Present:**

Mary-Anne Pomputius, Chair  
 Mona Nacey, Member  
 J. William Alley, Member  
 Todd Burson, Alternate, Acting Member

**Representing Applicant:**

Tonya Noonan

**Representing City/Staff:**

Judy L. Cordle, Development Services Manager

**Others Present and Giving Testimony:**

Clyde Kahrl

Mrs. Pomputius opened the meeting and asked the representative of the request to come forward to be sworn in. Mrs. Noonan came forward and was sworn in. Mrs. Noonan indicated she would like to put a fence in her front yard that is above the normal zoning variance, specifically an eight (8) foot fence.

Mrs. Pomputius asked for questions from the Board. Mrs. Nacey indicated she understood the request for the fence and asked why they didn't put the vegetables in the back yard. Mrs. Noonan indicated there is no sun, it's very shady. Mrs. Nacey indicated her only concern was if they give her a variance for eight feet how can the Board tell other people that they cannot have an eight foot fence in their front yard? Mrs. Noonan indicated she could understand the concern and indicated there probably weren't many people who would put a vegetable garden in their front yard. Mrs. Nacey indicated there are a lot of people who have come before the Board asking for variances. She stated they have never given anybody an eight foot variance. Mrs. Nacey asked if they wanted the fence over the whole front yard or just where the vegetables are. Mrs. Noonan indicated it is just where the vegetables are right now. Mr. Alley indicated that originally he was very opposed to this request but looking at the letters it looks like a lot of the neighbors support it. Mrs. Noonan indicated they have sympathy. Mr. Alley asked if they had anybody that was opposed to this request. Mrs. Cordle indicated that what they have before them are copies of all the information she had received either by telephone message or written submission. Mrs. Pomputius cautioned Mr. Alley to keep in mind that when they receive these positives they have to balance that with the fact that it's very hard to say no to a neighbor when they're soliciting support for a project and although she's pleased that they're civic minded she is not putting full weight on the letters, these are good neighbors that are friends and associates of the applicant. Mr. Alley indicated it's good to hear in this case that the people support it, he's here to represent the people and it's good to see so many people close by that support this. Mrs. Pomputius asked for comment from Mr. Burson. Mr. Burson indicated they are asking for an eight foot fence and went on to ask Mrs. Noonan if they thought a six foot fence would keep the deer out. Mrs. Noonan indicated that sadly, it would not. Mr. Burson indicated he saw the pictures of the fences they were proposing and asked which fence was proposed. Mrs. Noonan indicated it is the one with the open space at the top, she indicated it would not be exactly like the picture. Mr. Burson asked if they would be doing landscaping around the base of the fence. Mrs. Noonan indicated they would. Mr. Burson indicated the picture of the fence Mrs. Noonan spoke of was his choice. He went on to ask if the fence was eight foot. Mrs. Noonan indicated she thought it could be. She stated their property is on a hill and terraced. Mrs. Nacey asked to review a picture of the fence. Mr. Burson indicated he thought the neighbors would appreciate something more pleasing to the eye. He stated he lives on the east side of town so he could



City of Mount Vernon, Ohio  
**Board of Zoning Appeals**



**Minutes of Meeting**  
 Case 2014-BdZonApp-11  
 1117 East Vine Street

appreciate the deer issue. Mr. Alley indicated if he looked at the photo it looks like a six foot fence and they put decorative top on it and asked if that is considered a part of the fence. Mrs. Noonan indicated there are boards on the bottom. Mrs. Pomputius indicated the measurement is from the ground, not from the top slats. Mr. Alley asked if that would be considered a trellis over top of the fence, if a trellis would be considered a fence. Mrs. Noonan indicated if the whole thing, including the trellis is eight feet that should do it. Mrs. Nacey indicated her main concern is they are just going to do the vegetable garden, not from one side of the yard to the other all enclosed with an eight foot fence. Mrs. Noonan indicated just from where the screened fence is now she wanted to go one additional foot in each direction. Mr. Burson indicated that based on the drawing submitted it would be twenty-seven by thirty-four foot. Mrs. Noonan indicated the drawing is what she wants. Mr. Burson asked about proximity to the property line and Mrs. Noonan indicated it is right at the property line and cannot be moved forward. He stated he did drive by to get a feel for whether a fence would block vision and felt it didn't impact visibility of turning. Mrs. Pomputius indicated she would like to make a comment on 1155.15(e)(3) regarding the variance as requested. She stated they are requesting a variance that is peculiar to land or buildings but does not apply generally to land or buildings in the area and she believed that all the buildings in the area have a deer problem. Mrs. Pomputius went on to state that under the strict provisions of the zoning ordinance would be contrary to everything in the ordinance. She stated this would be unique in the City. Discussion turned to the requirements for four members to constitute a quorum for the Board and the voting requirement of three votes for a majority. Discussion also followed on the section noted earlier by Mrs. Pomputius and 1155.14. Mrs. Nacey asked about electric fence, Mrs. Noonan asked if it was legal and Mrs. Cordle indicated the City would not permit electric fence. Mr. Alley asked if there were comments from the audience. Mrs. Pomputius asked for comment and Mr. Kahrl came forward. He was duly sworn and presented testimony on the deer problem in the area. He addressed the increase in the deer population, patterns of travel, the impact on vegetation, how individuals in the neighborhood have dealt with deer and the implementation of hunting. Mrs. Nacey indicated they know deer are a problem in the area and if they give one variance how can they say no to the next one. Discussion followed on fencing in the area. Mr. Alley indicated the discussion was generating more concerns about the impact of fencing in the area. Mrs. Nacey indicated she was concerned about what happens in the future when others request an eight foot fence. Mrs. Pomputius indicated it would be setting a precedent. Mrs. Nacey indicated Mr. Kahrl had indicated the deer are roaming in the area and there are many houses in the area. Mr. Kahrl indicated he had put five foot wire fences around things in his yard and he did not plant a garden this year because of the deer. He indicated his neighbor has fencing around items in his yard. Mrs. Nacey indicated the fencing is around shrubbery, it's not an eight foot fence in the front yard; there is a difference. Mr. Kahrl indicated that circumstances change and Mrs. Pomputius responded that when circumstances change that is the time for the neighbors to petition City Council and request a modification of the ordinances. Mrs. Pomputius indicated they are asking for the Board to change the zoning code of the City because of one request. Mr. Kahrl agreed. Mrs. Pomputius indicated if he was concerned about this to bring his proposition before Council to discuss it. Mrs. Nacey indicated she would love to grant this variance, it is a beautiful garden, the fence is beautiful and if it wasn't for them setting a precedent she'd have no problem with it. Mr. Kahrl asked if he put up an eight foot fence in his back yard what would they think of that. Mrs. Nacey indicated the back yard is different from the front yard. Mrs. Pomputius indicated the back yard would still have to be a six foot fence. Mrs. Nacey indicated she thought it was totally different in the back than the front. She stated her point is it's in the front and they're setting a precedent. Mrs. Noonan understood the hesitation to grant the variance and she indicated it was being mixed with the ordinance needs to be changed. Mrs. Nacey indicated they are going by the ordinance they have. Mrs. Pomputius indicated that is why she suggested if they feel the ordinance needs to be changed in deference to the deer problem that this is not the place to change the ordinance, the place is to come before Council and request Council consider a change. Mrs. Noonan indicated if they are only talking about her property then they wouldn't need to be concerned for the future. Mrs. Nacey indicated they are just discussing whether they should or shouldn't be setting a precedent. Mr. Alley indicated if everybody is having the same issue and everybody comes to the Board because one was approved then they are setting a trend. Discussion followed on the area. Mrs. Noonan indicated that she just wanted to put something attractive and would like to do it six feet or three feet if that would do it. Mr. Alley asked if they were jumping over the current fence or going underneath it. Mrs. Noonan indicated they can't get under but they can get over because it is bendable. Mr. Burson asked if it was six or eight feet and she indicated the current one is eight. He then asked if the fence up right now was at issue. Mrs. Nacey indicated it is a temporary type of

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)

City of Mount Vernon, Ohio  
**Board of Zoning Appeals**



**Minutes of Meeting**  
 Case 2014-BdZonApp-11  
 1117 East Vine Street

fence. Mr. Burson asked if they kept that if they would be violating the ordinance. Mrs. Cordle related the requirement for any fencing in the code within the front setback is thirty-six inches. She stated that beyond that setback they can only allow six feet. She went on to indicated that if it were in the back yard their fence could be six feet with no variance but that is the maximum allowable in that particular district. It was indicated in the front it is three feet in height to the building setback. Discussion followed on the current installation and whether it is a fence. Mr. Alley indicated he would say it is a fence and it is against the current building codes. Mrs. Nacey indicated the request has put the Board in a quandary. Mr. Alley asked if they would make the statement that it is a six foot fence with a trellis two feet above if Mrs. Noonan would accept that and Mrs. Noonan indicated she would be delighted. Mrs. Pomputius indicated that had come up before and that is not acceptable, that two feet above it, that trellis is considered an extension of the fence, it had come up about twenty years ago, it is an eight foot fence. Mr. Burson indicated he was concerned about the precedent being set too and tried to think about things that are different about this circumstance with one being she is not doing the whole front yard, just the vegetable garden. He stated there is still a lot of green space on either side. Mrs. Nacey indicated the good part is the fence is very aesthetically pleasing. Mrs. Nacey asked if there were any other persons wishing to speak and there were not.

Mrs. Pomputius asked for a motion. **Mr. Alley made a motion that they approve this request as a six (6) foot fence with a decorative trellis of two (2) feet above the fence. Mrs. Nacey seconded the motion and asked that it be amended to only be around the vegetables and not the whole garden.** Mrs. Pomputius asked if before the vote there were any further questions or discussion. **Being none, Mrs. Pomputius called the roll and the following votes were cast: Mr. Alley, yes. Mr. Burson, yes. Mrs. Nacey, yes. Mrs. Pomputius, no. Mrs. Pomputius declared the variance granted.**

Mrs. Pomputius indicated the variance was granted but she stated the approval has been done in spite of regulation 1178.02 and in spite of 1173.18, in spite of 1155.14 subdivision 3, one through seven, specifically and declared the case closed.

  
 Mary-Anne Pomputius, Chair

  
 Judy L. Cordle, Recording Secretary





Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)



## Developer gets variance for hotel

By Fred Main

A developer has the go-ahead to build a new hotel in Mount Vernon after the board of zoning appeals granted two variances at its meeting recently.

Vaibhav Patel, president of Rama Tika Management, requested a height variance, as well as a setback variance for a Hampton Inn by Hilton to be built at 1560 Venture Drive, next to Big Lots. The new hotel would be four stories high and include 99 rooms.

The four stories would be higher than the 35 feet allowed under the

General Business zoning code by several feet. With no opposition to the request, the variance was granted.

BZA also granted a variance of the setback requirements from 15 foot to 10 foot to allow for the construction of a patio at the back of the hotel.

The next step will be getting zoning and building permits for the 2-plus acre parcel. Patel hopes to begin construction sometime this fall with a possible opening in early 2025.

BZA also granted a request for a variance for fence height at 123 E. Gambier St.

Marie Gudz Gerecke requested the variance in an effort to expand the usable space within their fence.

Gerecke is asking to build a 4-foot tall fence that would be 2 foot back from the sidewalk. The zoning requirement is a 3-foot tall fence, but Gerecke said with the slope of the land, that would create a safety hazard if someone were to trip or fall on their property.

The fence would not affect the usability or safety of the sidewalk, or the safety of the stop sign, according to Gerecke.

## SPORTS

from Page 3

season, and still holds school records in both shot (55-6) and discus (150-7).

Smith followed his heart and went to West Point Military Academy and played football for the Black Knights. He was a Big East First Team selection as well as a First Team All-American, Army's first since 1968. After nine years of military service, Smith went on to work in the business sector. In November 2022, he was inducted into the West Point Athletic Hall of Fame.

"It is really fantastic to be back home and receiving this honor," Smith said. "Sports was a teaching tool for me. I loved the game and the camaraderie. I played it hard and everything that went with it. I was fortunate to be part of a lot of really good teams – my family, my classmates – in sports and in combat. ... The things you learn in sports really carry you through. I had absolute-

ly no idea what I was getting myself into when I went off to the academy. I learned sacrifice, pride, teamwork, poise, how to win, how to lose and how to prepare from sports and I took that with me to the academy. That really prepared me."

### Tonya Booker

Booker, a 1991 Mount Vernon graduate, was a First Team All-Ohio basketball selection, and holds the Jack-ets career scoring record of 1,289 points. She was a two-time Street and Smith All-America selection and was the Gatorade Player of the Year. She also finished second in her class academically. Booker played in both the North South All-Star game and the Ohio-Michigan Basketball Classic, and she was a member of the state champion 18u Urbana AAU team.

After graduation, she went to the University of Illinois where she proceeded to be a four-year letterwinner, and started at point guard her senior year.

Booker, named captain, was Illinois' Defensive Player of the Year that season. She also continued her academic success, and earned the Big Ten Medal of Honor and a spot on Illinois' Bronze Tablet, an honor reserved for graduating in the top three percent of her class.

"This is quite unexpected," Booker said. "This is an honor. ... I wouldn't have had success without a lot of hard work and the joy of sport. That's where it starts. You only come into life with three gifts – your mind, your body and time. It is what you do with those three things that make you. That's what I focused on. ... Sports for me was an escape. It was really about the community and my teammates. They've influenced my whole life."

### J.D. Graham

Graham, who could not be in attendance, was a three-sport athlete at St. Vincent High School, and while he was a great athlete, he is

better known for what came after his high school career ended in 1965. Graham went to St. Joseph's College, and upon graduation, returned to Central Ohio and took over the reins of the Newark Catholic High School football program.

His 21-year run saw his teams post a 220-30-2 record with seven state championships. His winning percentage of 86.7 percent is the highest in Ohio High School history for coaches with 200 wins. From 1984-87, Graham's teams posted a 63-1 record and won four straight state titles. He was voted state Coach of the Year seven times.

Graham also served as athletic director and became the Recruiting Coordinator for The Ohio State University in 1992. His lone recruiting class included five NFL players.

Graham is also a member of the Newark Catholic Hall of Fame and the Ohio High School Football Coaches Hall of Fame.



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fraziermike213@gmail.com

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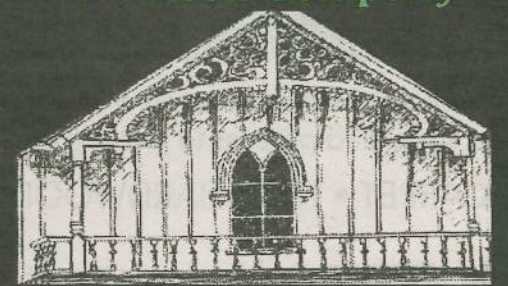
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## ROBERT B. SIMMERMACHER P.E.

*Consulting Engineers*  
77 EAST WILSON BRIDGE ROAD  
WORTHINGTON, OHIO 43085

March 19, 1979

Mr. Claude G. Schlosser, Mayor  
Members of Council  
City of Mount Vernon  
City Hall  
City of Mount Vernon, Ohio  
Attn: Mr. J. Vernon Hall PE  
Administrator of Engineering

Re: Edgewood Road Study  
Phase 1

Dear Mr. Hall:

I am handing you this date four sets of the Edgewood Road Study, Phase 1 for your review and comments. An exhibit is being prepared for presentation of the Study with the City and all interested parties which will include a color markup and photographs at the critical points in the Study area.

We have had a slight delay in the preparation of the first phase because of the heavy snow cover which put a stop on the field work necessary to determine the physical location of curbs, manholes, and reference to the baseline as was needed to validate the Study.

The baseline has been accurately staked in the field; however the winter snow has obliterated most of the visible reference except where the baseline is one the centerline of the existing street. It may be advisable to remark the line and review the problems in the field in order to get a clear picture of the various features which will effect the cost as the Study is extended into Phase 2 and 3.

I am available at your convenience to assist in the review and develop a criteria for the completion of the Study.

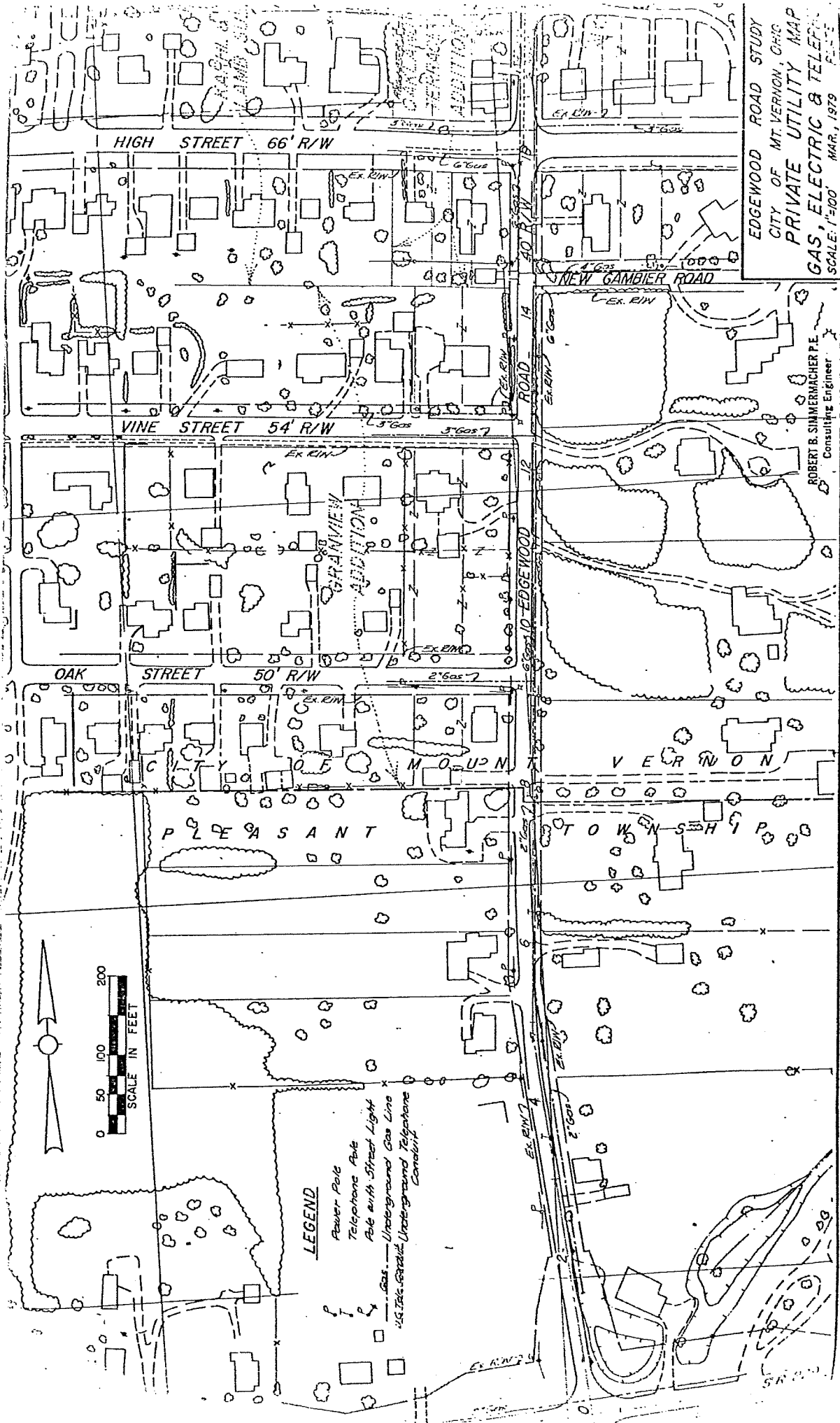
Respectfully submitted,



cc: Mayor Claude G. Schlosser

Attachments as noted

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)

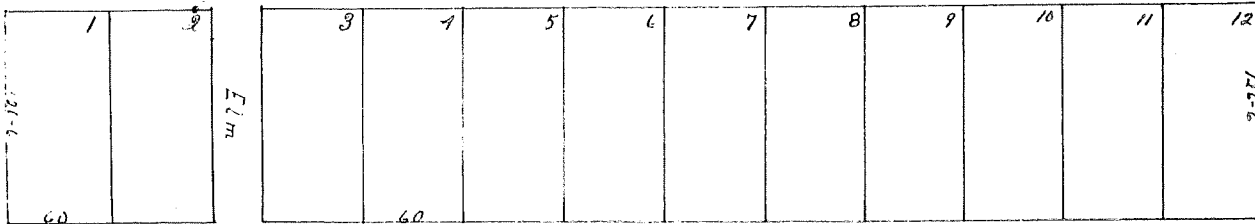




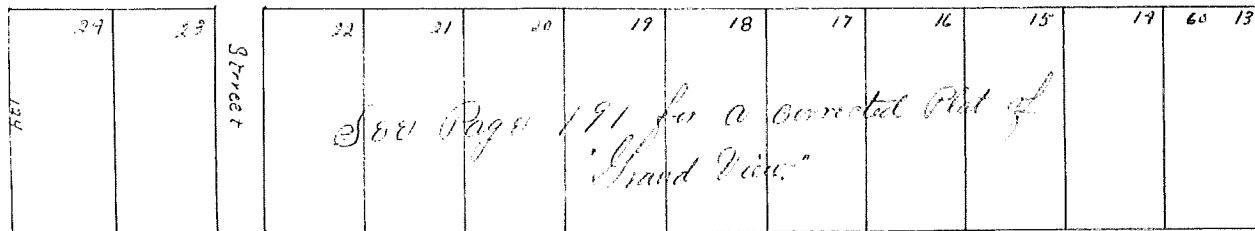
## GRAND VIEW.

In N.W. Pt. Lot 1. Q. 1. T. 6. Range. 12.

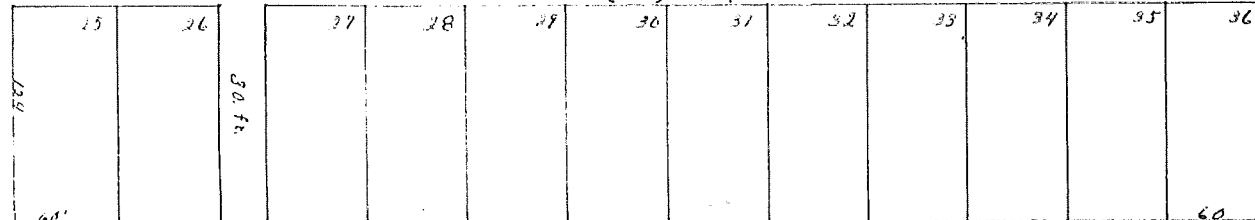
CAMBIE ALLEY.



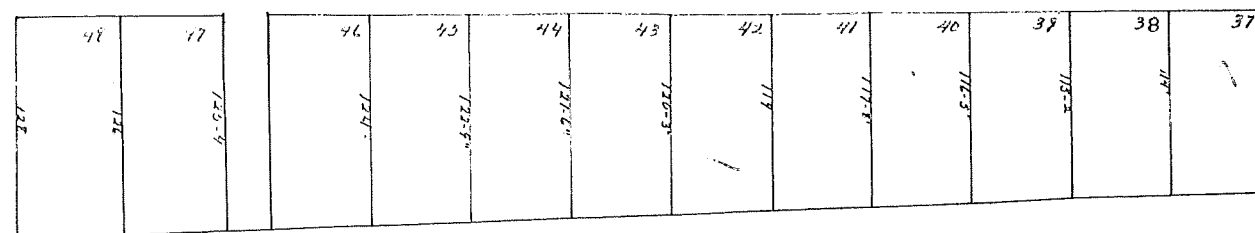
Vine Street 54 ft.



alley 16 ft



Oak Street 50 ft



Note  
A line was blazed 3 feet south of the  
N. E. cor. of lot No. 2, and a line 3 feet  
north of the S. E. cor. of lot No. 36

transferred from 31, 1906  
to A. Mitchell Sept. 2nd.

Filed for Record Feb. 6, 1906  
at 3 o'clock P.M.

Recorded March 27, 1906

Chas. S. Brown  
Recorder

The above plat represents a survey of 48 lots  
in the N.W. Pt. of lot No. 1 in the first quarter  
of Pleasant Township, Knox Co. Ohio, and  
named "Grand View" The above lots lay  
East of and adjoining the city of Mt. Vernon O.  
Surveyed and Platted at the request of

Sept. 26<sup>th</sup> 127-1902.

J. S. McConnell, Proprietor  
By John M. Gray, Surveyor.





Ted W. and Tracie L. Kiger  
204 South Edgewood Road  
Mount Vernon, Ohio

September 27, 2022

Lacie Blankenhorn, Development Services Manager  
City of Mount Vernon  
40 Public Square  
Mount Vernon, Ohio 43050

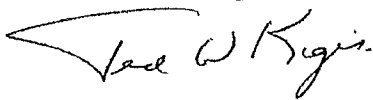
Re: Fencing at 202 South Edgewood Road

Dear Ms. Blankenhorn:

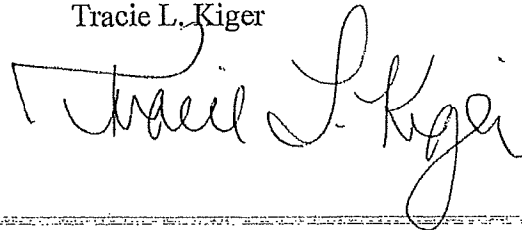
We own parcel 59-00184000 at 204 South Edgewood Road, which abuts to the north a parcel (66-06582000), owned by Joan B Stallard, Trustee. We have no objection to the installation of a woven wire fence between our two properties.

Very truly yours,

Ted W. Kiger



Tracie L. Kiger



Attachment: Letters of Support (3679 : 2022-Bza-37)  
Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)

Michael A. Webber  
200 South Edgewood Road  
Mount Vernon, Ohio 40305

September 27, 2022

Lacie Blankenhorn, Development Services Manager  
City of Mount Vernon  
40 Public Square  
Mount Vernon, Ohio 43050

Re: Fencing at 202 South Edgewood Road

Dear Ms. Blankenhorn:

I own parcel 66-06083000 at 200 South Edgewood Road, which abuts to the south a parcel (66-06582000), owned by Joan B Stallard, Trustee. I have no objection to the installation of a woven wire fence between our two properties.

Very truly yours,



Michael A. Webber

Attachment: Letters of Support (3679 : 2022-Bza-37)

Attachment: Stallard BZA app2 RFS (3889 : 2023-Bza-23)





Prob. 203-D

38227500

BARNETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

Deed of Executor or Administrator with Will Annexed

(Under Authority of Will)

Know All Men by these Presents:

That Whereas, on the 15th day of October 1974, the last Will and Testament of Marguerite A. White deceased, was admitted to Probate and record in the Probate Court of Knox County, Ohio, and on the 15th day of October 1974 Charles A. White w. as duly appointed and qualified as Executor of said decedent by said Probate Court, and he is now the lawful Executor of the estate said testatrix.

That said last Will and Testament, among other provisions, contains the following, to-wit:

"FOURTH. I hereby grant to my executor, hereinafter named, full power and authority to sell and dispose of, at either public or private sale, any or all of my estate, real or personal, or both, for such prices, and upon such terms of credit or otherwise, and in such manner, as my executor may deem best, and to execute, acknowledge and deliver to the purchaser, or purchasers, all necessary or proper deeds and other instruments of conveyance and transfer thereof.

FIFTH. I hereby nominate and appoint my son, Charles A. White, to serve as Executor of this my Last Will and Testament, without bond....."

TRANSFERRED

FEE SEC. 319.54 74.00  
SEC. 319.202 R. C. COMPLIED WITH

APR 2 1975

J. WILLIAM MOODY, AUDITOR  
KNOX COUNTY, OHIO  
NO. 313 BY J. W.

The State of Ohio, County of Knox, S.S.  
I, Tanner S. Salyers, County Recorder within and for said county and in whose custody the bills and records of said office are required by the laws of the State of Ohio to be kept do hereby certify that the foregoing is taken and copied from record of

Deed Vol. 323 Page 747  
of said office that it is true and correct copy thereof.  
Witness my hand and official seal at Mt. Vernon, Ohio this  
31 day of October 2023  
Tanner S. Salyers - County Recorder  
Tara Stiltner

323 747

323 748

And Whereas, the said testat. ~~fix~~ died seized in fee simple of the real estate hereinafter described, and in order to carry out the provisions of said last Will and Testament, ~~and xxx~~

it is necessary to sell said real estate.

Now, therefore, I, Charles A. White, as Executor, as aforesaid, in pursuance to the said provisions of the said last Will and Testament of said Marguerite A. White deceased, and by virtue of the statute in such cases made and provided, and of the powers vested in me and for and in consideration of the premises, and the sum of ~~Forty-Four Thousand and NO/100~~ Dollars (\$44,000.00), paid, or secured to be paid to ~~me~~ by said Richard Stallard and Joan B. Stallard, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to the said Richard Stallard and Joan B. Stallard their heirs and assigns forever, the following Real Estate situated in the County of Knox in the State of Ohio and in the City of Mount Vernon and bounded and described as follows:

All that part or parcel of Lot No. One (1) in the Second Quarter of Township Six (6), Range Twelve (12) in said Township, County and State, bounded and described as follows: Beginning at an iron stake in the center of a public road leading South from the New Gambier Road to the Old Gambier Road, which stake is forty (40) rods South of the North line of said township; thence South 86-1/4 degrees East 40 rods to a stake from which a white oak 28 inches in diameter bears North 4-1/4 degrees West 28-1/2 links distant; thence North 3-1/4 degrees East 8 rods to a stake; thence North 86-1/4 degrees West 40 rods to an iron stake in the center of the aforesaid road; thence in the center of said road South 3-1/4 degrees West 8 rods to the place of beginning; containing two (2) acres.

Being the same premises found in Volume 296, at Page 648 of the Knox County Deed Records. See also Volume 183, at Page 84 of the Knox County Deed Records.

Marguerite A. White, deceased, was also known as Margueritte A. White.

NOTION  
OVED  
"HICKWOOD  
ITY ENGINEER  
C. B. G.  
Knox County  
Recorder  
CLERK  
JAN 24 1901

COMPARED

Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)



COMPARE

Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)

To Have and to Hold said premises, with all the privileges and appurtenances  
thereto belonging, to the said Richard Stallard and Ioan B. Stallard  
their heirs and assigns forever, as fully and completely  
as I, the said Charles A. White

323 749

323 750

as such.....Executor.....by virtue of said last Will and Testament, and of the statute made and provided for such cases, might and should sell and convey the same.

In Witness Whereof, The said.....Charles A. White

as such.....Executor.....

has hereunto set his hand, this 23<sup>rd</sup>

day of March A. D. 1975

Signed and acknowledged in the presence of

1. *Patricia M. Harker* \* *Charles A. White*  
2. *Fred Barry, Jr.* Executor of the Estate  
of Marguerite A. White

COMPARED

THE STATE OF OHIO

KNOX County, ss.

Be it Remembered, that on this 23<sup>rd</sup> day of March 19 75 before me, the subscriber, a Notary Public

in and for said County, personally came the above named

Charles A. White as Executor of the Estate of Marguerite A. White the Grantor in the foregoing Deed, and acknowledged the signing of the same to be his voluntary act and deed as such Executor for the uses and purposes therein mentioned.



In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

This Instrument prepared by:

Fred Barry, Jr., Attorney at Law.

*Fred Barry, Jr.*  
Notary Public

38227

DEED  
OF EXECUTOR OR ADMINISTRATOR  
WITH WILL ANNEXED

FROM

Charles A. White, Executor of the  
Estate of Marguerite A. White

TO

Richard Stallard and Joan B. Stallard  
202 South Edgewood Road  
Mount Vernon, Ohio 43050

Received April 2 1975  
at 8:17 o'clock P. M.  
Recorded April 2 1975  
In Knox County  
Record of Deeds, Vol. 323  
Page 747-750

*Barry Barry*  
Recorder

Recorder's Fee

\$ 5.00

TRANSFERRED

10

Auditor

By

Deputy

Barry Barry, Recorder, Knox County, Ohio



TRANSFERRED  
SEE SEC. 319.54 T  
SEC. 319.202 R.C. COMPLIED WITH

AUG 29 2013

JONETTE CURRY  
KNOX COUNTY, OHIO  
NO. 1774 BY mel



Doc ID: 003312330002 Type: OFF  
Kind: DEED  
Recorded: 08/29/2013 at 08:37:44 AM  
Fee Amt: \$28.00 Page 1 of 2  
Knox Ohio  
John Lybarger County Recorder  
File# 2013-00008211

BK 1423 PG 479-480

## QUIT-CLAIM DEED

THIS QUIT CLAIM DEED is made this 27<sup>th</sup> day of August, 2013, by and between **Richard Stallard and Joan B. Stallard, married**, whose mailing address is 202 South Edgewood Road, Mt. Vernon, OH 43050, hereinafter referred to as **Grantors**, and **Joan B. Stallard, Trustee of the Joan B. Stallard Trust Agreement U/A 7/30/13**, whose mailing address is 202 South Edgewood Road, Mt. Vernon, OH 43050, hereinafter referred to as **Grantee**.

KNOW ALL MEN BY THESE PRESENTS that **Richard Stallard and Joan B. Stallard, as Grantors**, for the sum of One Dollar (\$1.00) paid to Grantors by Grantee, hereby grant and quit claim all right, title and interest of **Grantors** to **Joan B. Stallard, Trustee of the Joan B. Stallard Trust Agreement U/A 7/30/13, as Grantee**, the following described real estate:

Situated in the County of Knox, in the State of Ohio, and in the City of Mount Vernon, and bounded described as follows:

All that part or parcel of Lot No. One (1) in the Second Quarter of Township Six (6), Range Twelve (12) in said Township, County and State, bounded and described as follows: Beginning at an iron stake in the center of a public road leading South from the New Gambier Road to the Old Gambier Road, which stake is forty (40) rods South of the North line of said township; thence South 86-1/4 degrees East 40 rods to a stake from which a white oak 28 inches in diameter bears North 4-1/4 degrees West 28-1/2 links distant; thence North 3-1/4 degrees East 8 rods to a stake; thence North 86-1/4 degrees West 40 rods to an iron stake in the center of the aforesaid road; thence in the center of said road South 3-1/4 degrees West 8 rods to the place of beginning; containing two (2) acres.

DESCRIPTION  
APPROVED  
JIM HENRY  
KNOX COUNTY ENGINEER

Parcel Nos: 66-06582.000  
Property Address: 202 South Edgewood Road, Mt. Vernon, OH 43050  
Prior Instrument Reference: Vol. 323, Page 747, Deed Records of Knox County

James B. Stallard  
RICHARD STALLARD, GRANTOR  
P.U.

Joan B. Stallard  
JOAN B. STALLARD, GRANTOR

[Notary Acknowledgment on Follow Page]

436467

The State of Ohio, County of Knox, S.S.  
I, Tara Stiltner, County Recorder within and for said county and in whose custody the bills and records of said office are required by the laws of the State of Ohio to be kept do hereby certify that the foregoing is taken and copied from record of

Official Records Vol. 1423 Page 479  
of said office that it is true and correct copy thereof.  
Witness my hand and official seal at Mt. Vernon, Ohio this  
31 day of October 2023  
Tara Stiltner  
Tara Stiltner - County Recorder

Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)

STATE OF OHIO  
COUNTY OF Knox, SS

The foregoing instrument was executed before me this 27<sup>th</sup> day of August, 2013, by **Richard Stallard, Grantor**, who acknowledged his signing to be his voluntary act and deed.



[Signature]  
NOTARY PUBLIC  
*My Commission Expires:* Notary Public, State of Ohio  
Permanent Commission  
O. R. C. 147.03

STATE OF OHIO  
COUNTY OF Knox, SS

The foregoing instrument was executed before me this 27<sup>th</sup> day of August, 2013, by **Joan B. Stallard, Grantor**, who acknowledged her signing to be her voluntary act and deed.



[Signature]  
NOTARY PUBLIC  
*My Commission Expires:* Notary Public, State of Ohio  
Permanent Commission  
O. R. C. 147.03

***This Instrument Prepared By:***  
Richard D. Wetzel, Esq.  
Crabbe, Brown & James  
500 South Front Street, Suite 1200  
Columbus, Ohio 43215  
(614) 229-4526 Fax (614) 229-4559  
Email: [Rwetzel@cbjlawyers.com](mailto:Rwetzel@cbjlawyers.com)

436467

Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)

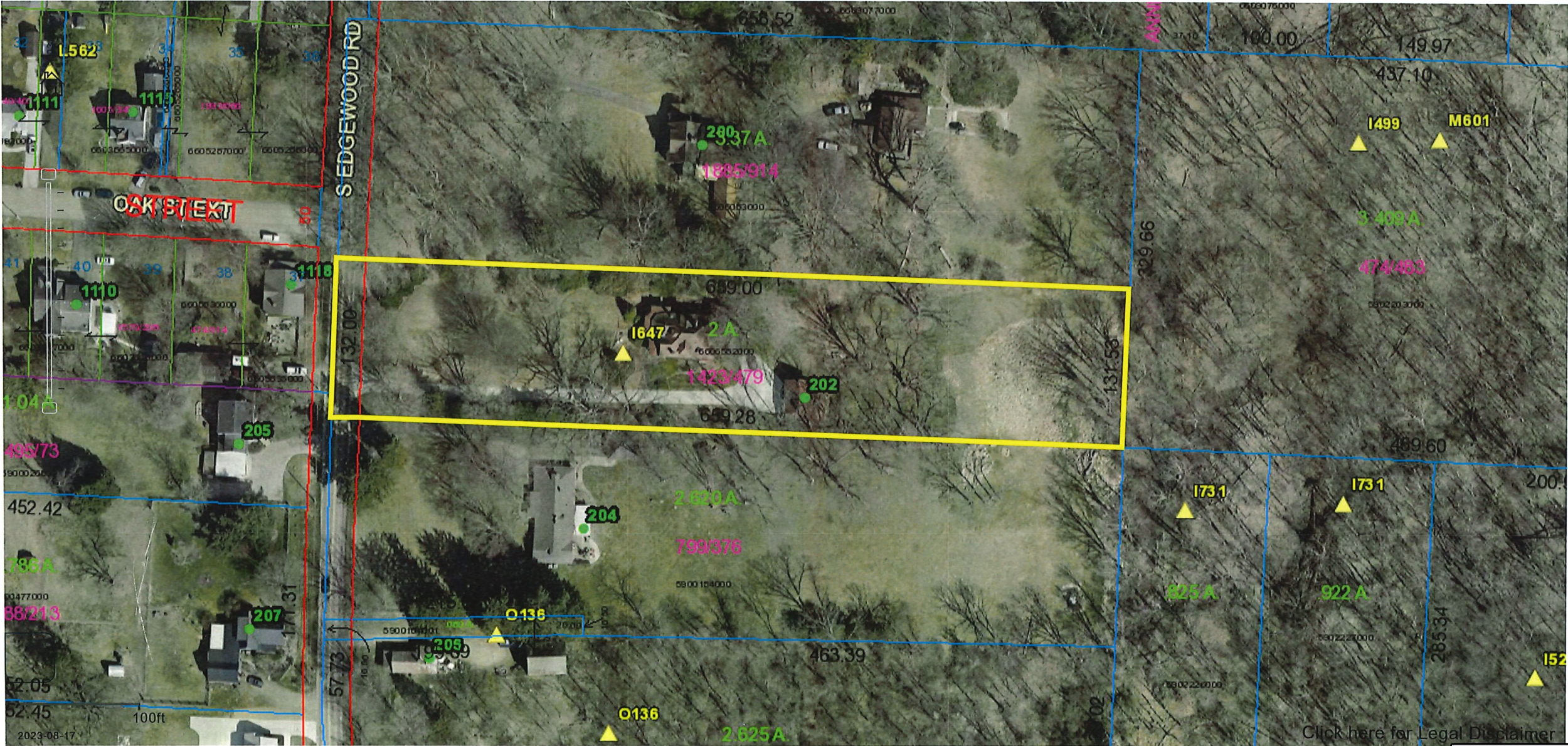
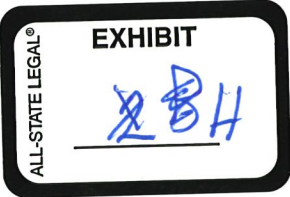




(<https://www.knoxcountyauditor.org/>)

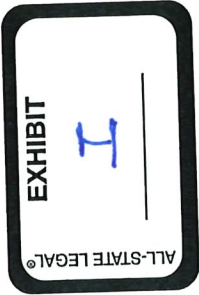
Knox County Ohio, GIS  
Sarah Thorne

THIS CERTIFIES A TRUE COPY  
OF THE ACTUAL RECORD  
*Sarah Thorne*  
KNOX COUNTY AUDITOR



Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)



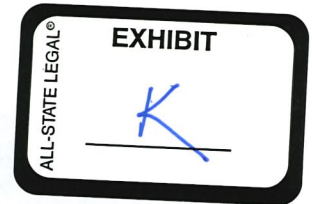






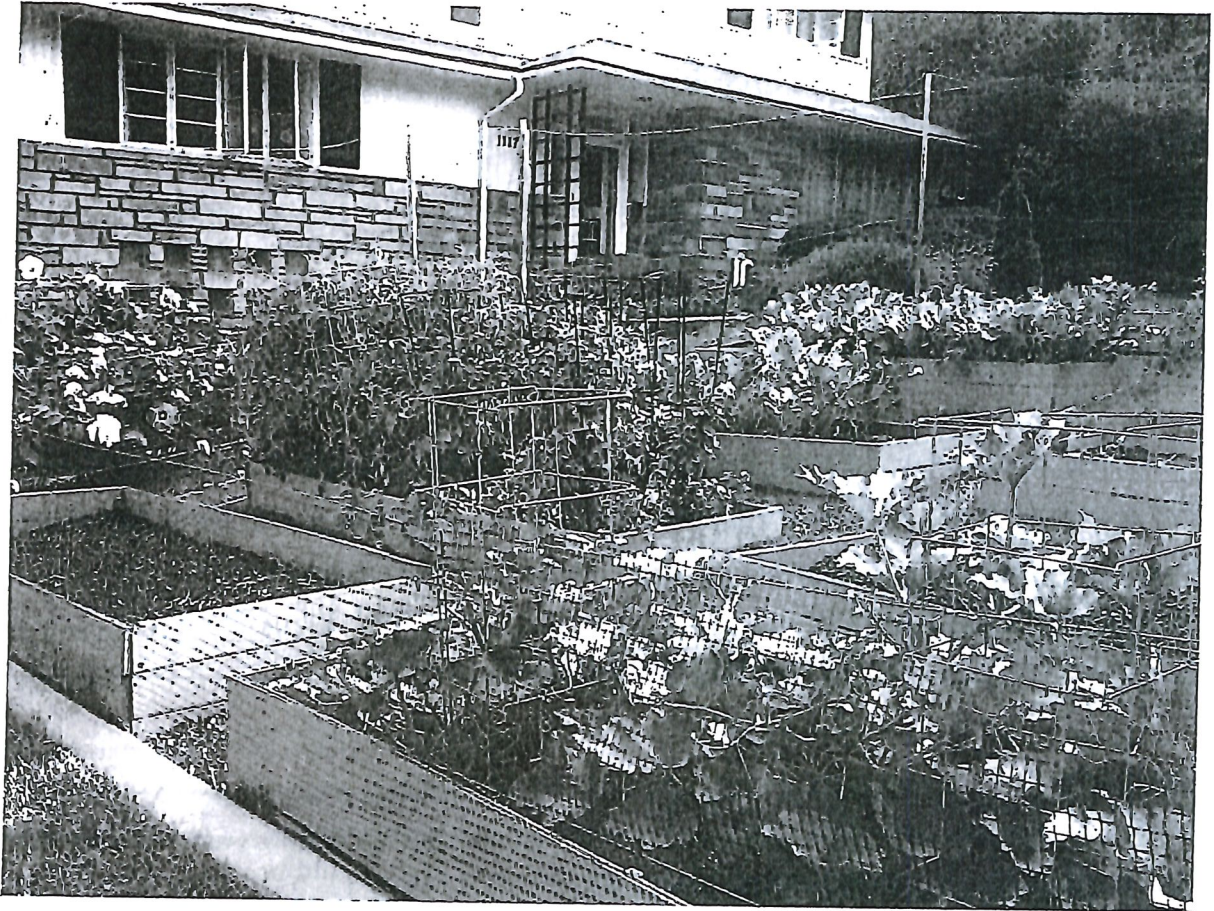
City of Mount Vernon, Ohio  
Board of Zoning Appeals

Request for Hearing



| Applicant's Information                                                                                                                                                                                                                            |                                            |                                                                                                 |                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------|
| Owner's Name, Address and Phone<br>John and Tonya Noonan 1117 E. Vine St. 397-4276                                                                                                                                                                 |                                            |                                                                                                 |                        |
| Agent's Name, Address and Phone<br>Tonya Noonan 1117 E. Vine St. 397-4276                                                                                                                                                                          |                                            |                                                                                                 |                        |
| Site Information                                                                                                                                                                                                                                   |                                            |                                                                                                 |                        |
| Site Address<br>1117 East Vine Street                                                                                                                                                                                                              |                                            | Legal Description<br>Grandview 12                                                               |                        |
| Parcel Number<br>66-05289.00<br>66-05290.00                                                                                                                                                                                                        | Deed Volume and Page Number<br>966 706-707 | Zoning District<br>R-1                                                                          |                        |
| Existing use of property<br>ugly, ineffective temporary fence to protect edibles from deer.                                                                                                                                                        |                                            | Proposed use of property<br>Beautiful, effective 8 foot wooden, cow/hog visible fence structure |                        |
| Hearing Request                                                                                                                                                                                                                                    |                                            |                                                                                                 |                        |
| Type of Hearing Requested                                                                                                                                                                                                                          |                                            |                                                                                                 |                        |
| <input checked="" type="checkbox"/> Variance <input type="checkbox"/> Conditional Use <input type="checkbox"/> Appeal of Decision <input type="checkbox"/> Map Interpretation <input type="checkbox"/> Substantially Similar Use                   |                                            |                                                                                                 |                        |
| In the following section, please list a brief description of the request. Narrative statements and any additional documents or information required by the Zoning Code and Chapter 1155 should be attached to this application as separate sheets. |                                            |                                                                                                 |                        |
| Request:<br>Request variance for attractive, highly transparent eight foot high structure to protect edibles from deer. (see attached)                                                                                                             |                                            |                                                                                                 |                        |
| I hereby certify that the information submitted on this application and on any sketches, drawings or other documents submitted with this application is true and exact.                                                                            |                                            |                                                                                                 |                        |
| Date: Aug 13, 2014                                                                                                                                                                                                                                 |                                            | By:                                                                                             |                        |
| Status of Application                                                                                                                                                                                                                              |                                            |                                                                                                 |                        |
| <b>RECEIVED</b><br><br><b>AUG 13 2014</b><br><br><b>DEVELOPMENT SERVICES</b><br><b>MOUNT VERNON, OH</b>                                                                                                                                            |                                            | Case Number<br>2014-Bd Zon App-11                                                               |                        |
|                                                                                                                                                                                                                                                    |                                            | Hearing Date<br>September 3, 2014                                                               |                        |
|                                                                                                                                                                                                                                                    |                                            | Fee deposit<br>\$75.00                                                                          | Date Paid<br>8/13/2014 |
| Status of Board's Action                                                                                                                                                                                                                           |                                            |                                                                                                 |                        |
| <input type="checkbox"/> Approved <input type="checkbox"/> Denied                                                                                                                                                                                  |                                            |                                                                                                 |                        |





This is my garden . The deer were able to jump a 6 foot fence, and destroyed the green beans and swiss chard. They damaged the carrots, cucumbers, tomatoes and peas.



ALL-STATE LEGAL®

EXHIBIT

J

**JOHNSVILLE FENCING & SUPPLIES**

Custom Fencing &amp; Assorted Farm Gates

7533 Co. Rd. 97  
Bellville, OH 44813

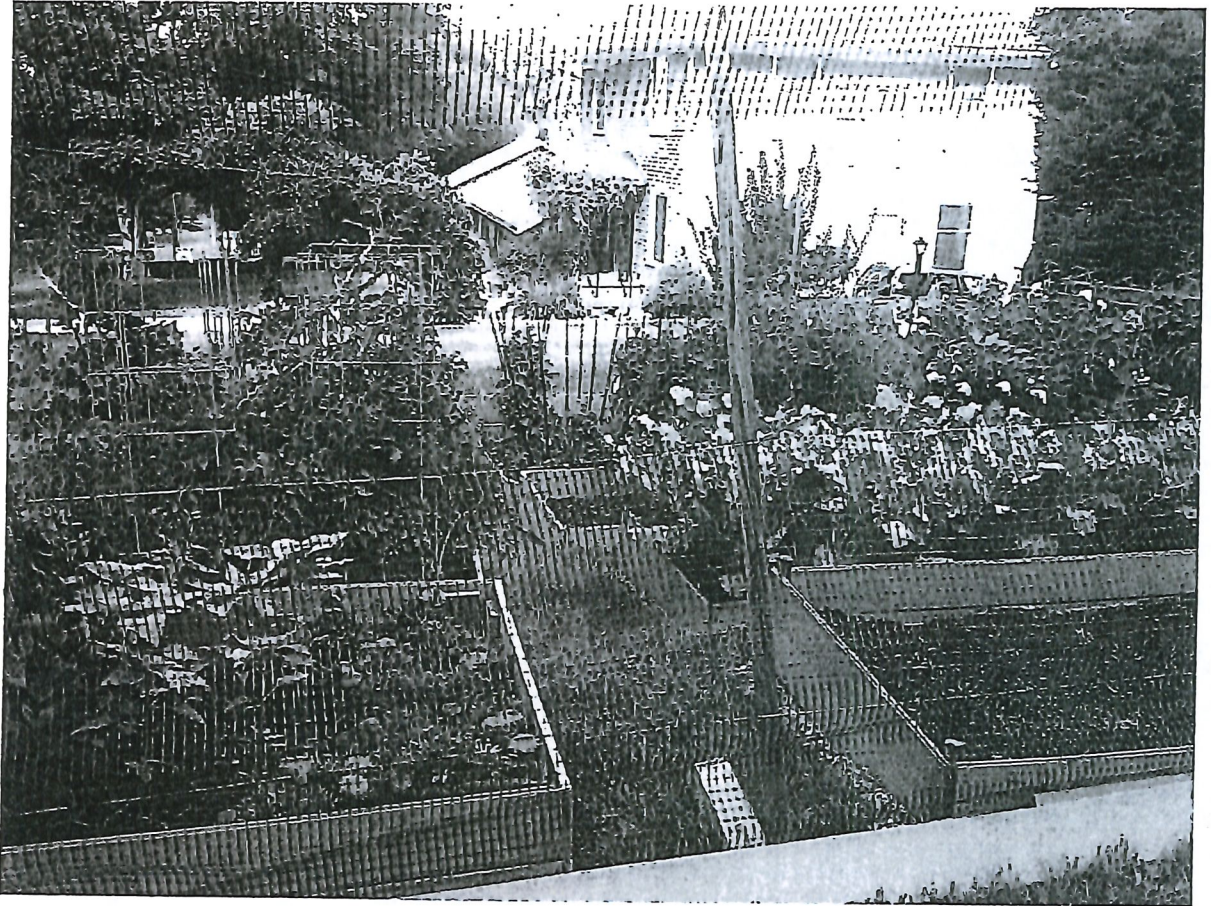
|                               |                                  |        |        |                     |                  |
|-------------------------------|----------------------------------|--------|--------|---------------------|------------------|
| NAME <i>Richard Steward</i>   |                                  |        |        |                     |                  |
| ADDRESS                       |                                  |        |        |                     |                  |
| PH. NO.                       |                                  |        |        | DATE <i>8-25-22</i> |                  |
| SOLD BY                       | CASH                             | C.O.D. | CHARGE | ON ACCT.            | MDSE. RETD.      |
|                               | <i>X</i>                         |        |        |                     |                  |
| QTY.                          | DESCRIPTION                      |        |        | PRICE               | AMOUNT           |
|                               | <i>Build 1500' 7' Decr fence</i> |        |        |                     |                  |
|                               | <i>with 4 gates</i>              |        |        |                     | <i>11,600.00</i> |
|                               | <i>1- Extra gate</i>             |        |        |                     | <i>600.00</i>    |
|                               | <i>128' Post</i>                 |        |        | <i>6.00</i>         | <i>768.00</i>    |
|                               |                                  |        |        |                     | <i>12,968.00</i> |
|                               | <i>Paid Down Payment</i>         |        |        |                     | <i>3,000.00</i>  |
|                               |                                  |        |        |                     | <i>9,968.00</i>  |
| This Bill Must Be Paid        |                                  |        |        |                     |                  |
| Within 30 Days                |                                  |        |        |                     |                  |
| To Avoid A 2% Service Charge. |                                  |        |        |                     |                  |
|                               |                                  |        |        | TAX                 |                  |
| RECEIVED BY                   |                                  |        |        | TOTAL               |                  |

**No. 005504**ALL CLAIMS AND RETURNED GOODS  
MUST BE ACCOMPANIED BY THIS BILL.GP-154-2  
PRINTED IN U.S.A.*Thank You*

The deer knocked down and tore holes in the "deer fence" near the sidewalk and tromped through the beds to take more of the food I am using to feed my family of five.







The deer have gone under the “deer fence”, hence the unsightly supports to keep the bottom impassable.

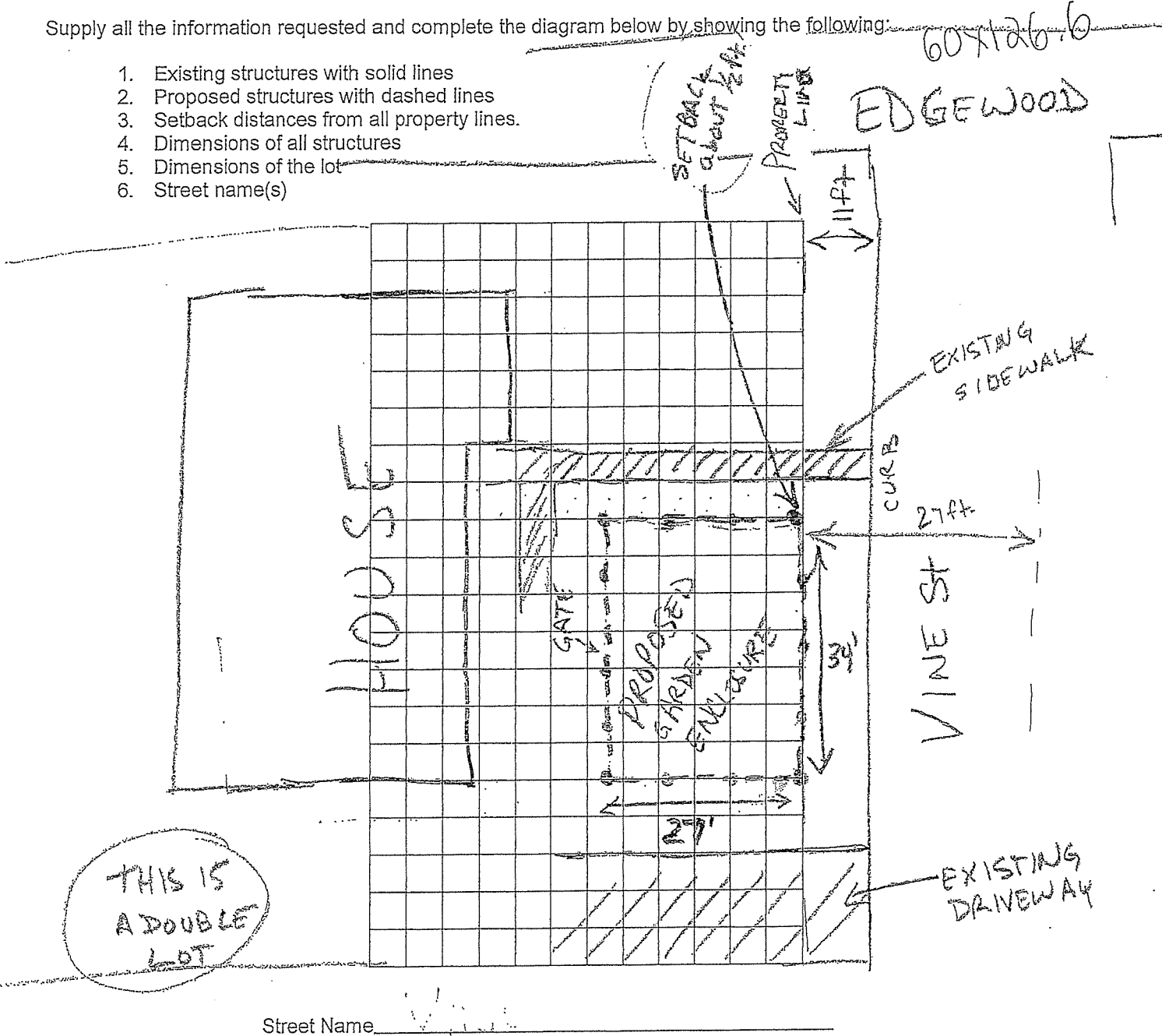
City of Mount Vernon  
Zoning Permit Sketch

Site Address 1117 East Vine Street Mount Vernon, OH

Instructions to Applicant

Supply all the information requested and complete the diagram below by showing the following:

- 1. Existing structures with solid lines
- 2. Proposed structures with dashed lines
- 3. Setback distances from all property lines.
- 4. Dimensions of all structures
- 5. Dimensions of the lot
- 6. Street name(s)



I hereby certify that the information submitted on this sketch and/or other attached drawings and documents is true and correct.

By \_\_\_\_\_  
Date \_\_\_\_\_

Zoning Enforcement Officer Action

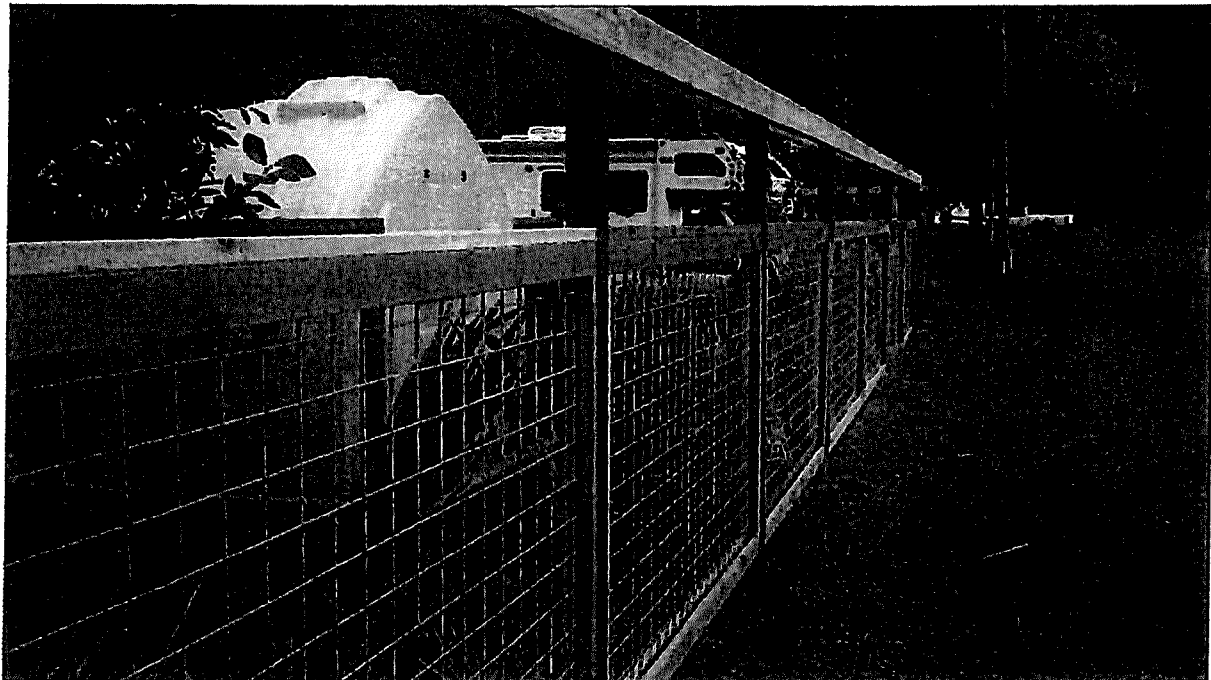
☐ Approved    ☐ Disapproved

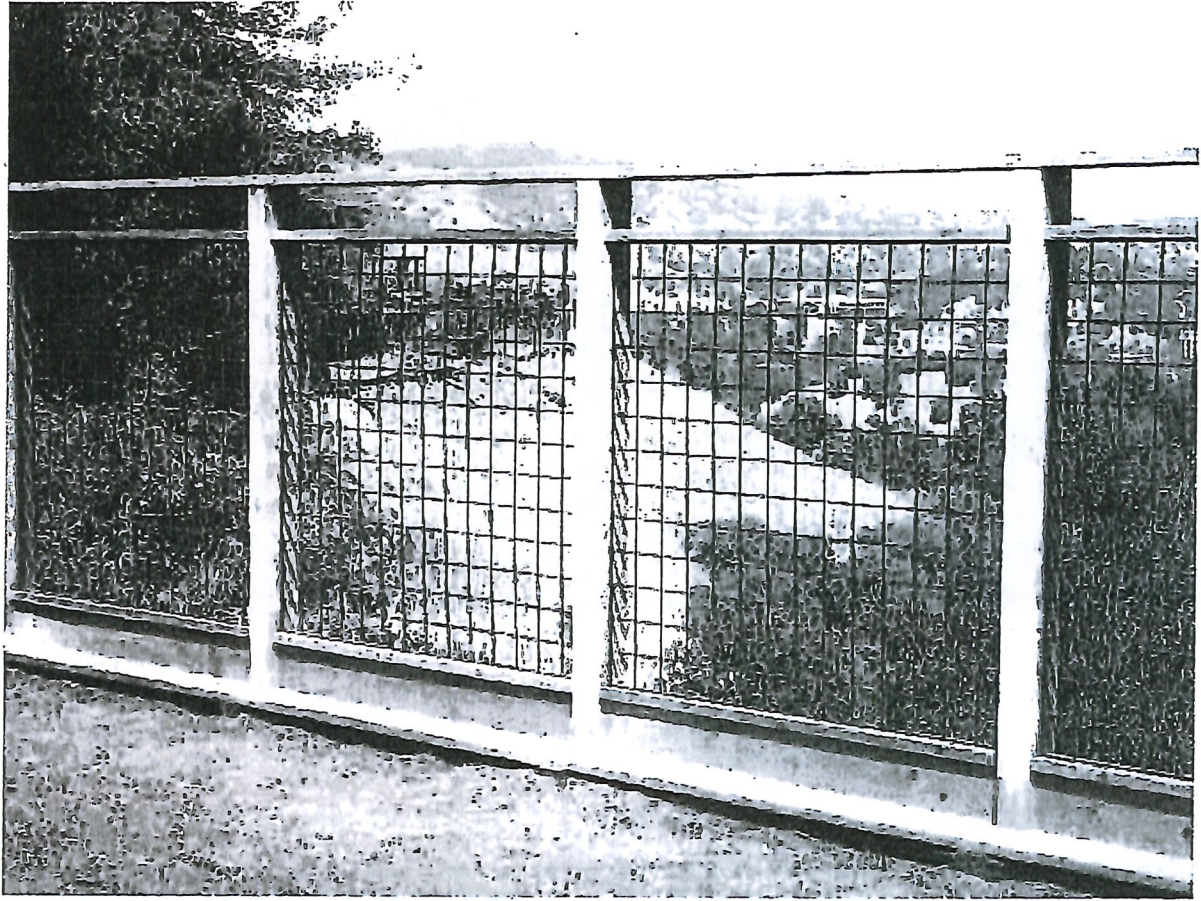
By \_\_\_\_\_  
Date \_\_\_\_\_





If it please the Court, I would be happy to use this very minimalist type of permanent fence, and plant attractive flowers and bushes to make it pleasing to the eye. Or, the one below for something more civilized looking. The next two photos are also some structures with high visibility that would exclude deer.









Permit No. \_\_\_\_\_



City of Mount Vernon, Ohio  
Application for Zoning Permit

| Application                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Owner's Name, Address and Phone<br><b>John and Tonya Noonan 1117 East Vine St. 397-4276</b>                                                                                                                                                                                                                                                                            |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Contractor's Name, Address and Phone<br><b>John Noonan 1117 East Vine St. 397-4276</b>                                                                                                                                                                                                                                                                                 |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Applicant's Name, Address and Phone<br><b>Tonya Noonan 1117 East Vine St. 397-4276</b>                                                                                                                                                                                                                                                                                 |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Site Information                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Site Address<br><b>1117 East Vine Street</b>                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                  | Side Street (if corner lot)<br><b>Edgewood Road</b>                                                                             |                                                                                                                              |
| Legal Description<br><b>Grandview 12</b>                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                  | Parcel Number <del>66-05289.000</del><br><b>66-05290.000</b>                                                                    | Deed Volume and Page Number<br><b>466 106-107</b>                                                                            |
| Zoning District<br><b>R-1</b>                                                                                                                                                                                                                                                                                                                                          | Flood Zone<br><input type="checkbox"/> Floodway <input type="checkbox"/> AE Zone <input type="checkbox"/> A Zone <input type="checkbox"/> X Zone | <b>66-05289.000</b>                                                                                                             |                                                                                                                              |
| Historic District<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                               |                                                                                                                                                  | Status of Historic Review Commission's Action<br><input type="checkbox"/> Approved <input type="checkbox"/> Denied Case Number: |                                                                                                                              |
| Project Information                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Description of Proposed Work<br><b>An attractive 8 foot tall structure with wooden frame and very high visibility cow/hog fence to prevent deer destruction of edibles.</b>                                                                                                                                                                                            |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Existing use of property<br><b>ugly temporary fence deer knock raised beds over and shred and destroy</b>                                                                                                                                                                                                                                                              |                                                                                                                                                  | Proposed use of property<br><b>Beautiful fence with landscaping that is effective.</b>                                          |                                                                                                                              |
| Parking spaces/loading berths                                                                                                                                                                                                                                                                                                                                          | Building heights                                                                                                                                 | Dwelling units                                                                                                                  |                                                                                                                              |
| State Approval                                                                                                                                                                                                                                                                                                                                                         | Date                                                                                                                                             | Approval Number                                                                                                                 | <input type="checkbox"/> Full approval<br><input type="checkbox"/> Partial approval<br><input type="checkbox"/> Not required |
| <p>I hereby certify that the information submitted on this application and on any sketches, drawings or other documents submitted with this application is true and exact. This permit shall expire and may be revoked if work has not begun within six months or substantially completed within one year.</p> <p>Date: <b>AUG 13, 2014</b> By: <b>[Signature]</b></p> |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Status of Application                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| <input checked="" type="checkbox"/> Application rejected                                                                                                                                                                                                                                                                                                               |                                                                                                                                                  | Date: <b>8/13/14</b> By: <b>[Signature]</b> Reason(s): <b>Exceeds height requirement</b>                                        |                                                                                                                              |
| <input checked="" type="checkbox"/> Referred to Board of Appeals                                                                                                                                                                                                                                                                                                       |                                                                                                                                                  | Status of Board's Action<br><input type="checkbox"/> Approved <input type="checkbox"/> Denied Case Number:                      |                                                                                                                              |
| <input type="checkbox"/> Application approved                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Comments                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Date:                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                  | By:                                                                                                                             |                                                                                                                              |
| Fee Calculation                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                  |                                                                                                                                 |                                                                                                                              |
| Estimated Cost                                                                                                                                                                                                                                                                                                                                                         | Base Fee                                                                                                                                         |                                                                                                                                 |                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                        | Park Development Fee                                                                                                                             |                                                                                                                                 |                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                        | Total Fee                                                                                                                                        |                                                                                                                                 |                                                                                                                              |

Updated 7-01-2013

Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)



City of Mount Vernon, Ohio  
**Board of Zoning Appeals**



**Minutes of Meeting**  
 Case 2014-BdZonApp-11  
 1117 East Vine Street

The Board of Zoning Appeals of the City of Mount Vernon, Ohio, convened for a meeting September 3, 2014, at 5:30 pm in the Council Chambers of City Hall. Consideration of request for variance of fence height requirements.

**Board Members Present:**

Mary-Anne Pomputius, Chair  
 Mona Nacey, Member  
 J. William Alley, Member  
 Todd Burson, Alternate, Acting Member

**Representing Applicant:**

Tonya Noonan

**Representing City/Staff:**

Judy L. Cordle, Development Services Manager

**Others Present and Giving Testimony:**

Clyde Kahrl

Mrs. Pomputius opened the meeting and asked the representative of the request to come forward to be sworn in. Mrs. Noonan came forward and was sworn in. Mrs. Noonan indicated she would like to put a fence in her front yard that is above the normal zoning variance, specifically an eight (8) foot fence.

Mrs. Pomputius asked for questions from the Board. Mrs. Nacey indicated she understood the request for the fence and asked why they didn't put the vegetables in the back yard. Mrs. Noonan indicated there is no sun, it's very shady. Mrs. Nacey indicated her only concern was if they give her a variance for eight feet how can the Board tell other people that they cannot have an eight foot fence in their front yard? Mrs. Noonan indicated she could understand the concern and indicated there probably weren't many people who would put a vegetable garden in their front yard. Mrs. Nacey indicated there are a lot of people who have come before the Board asking for variances. She stated they have never given anybody an eight foot variance. Mrs. Nacey asked if they wanted the fence over the whole front yard or just where the vegetables are. Mrs. Noonan indicated it is just where the vegetables are right now. Mr. Alley indicated that originally he was very opposed to this request but looking at the letters it looks like a lot of the neighbors support it. Mrs. Noonan indicated they have sympathy. Mr. Alley asked if they had anybody that was opposed to this request. Mrs. Cordle indicated that what they have before them are copies of all the information she had received either by telephone message or written submission. Mrs. Pomputius cautioned Mr. Alley to keep in mind that when they receive these positives they have to balance that with the fact that it's very hard to say no to a neighbor when they're soliciting support for a project and although she's pleased that they're civic minded she is not putting full weight on the letters, these are good neighbors that are friends and associates of the applicant. Mr. Alley indicated it's good to hear in this case that the people support it, he's here to represent the people and it's good to see so many people close by that support this. Mrs. Pomputius asked for comment from Mr. Burson. Mr. Burson indicated they are asking for an eight foot fence and went on to ask Mrs. Noonan if they thought a six foot fence would keep the deer out. Mrs. Noonan indicated that sadly, it would not. Mr. Burson indicated he saw the pictures of the fences they were proposing and asked which fence was proposed. Mrs. Noonan indicated it is the one with the open space at the top, she indicated it would not be exactly like the picture. Mr. Burson asked if they would be doing landscaping around the base of the fence. Mrs. Noonan indicated they would. Mr. Burson indicated the picture of the fence Mrs. Noonan spoke of was his choice. He went on to ask if the fence was eight foot. Mrs. Noonan indicated she thought it could be. She stated their property is on a hill and terraced. Mrs. Nacey asked to review a picture of the fence. Mr. Burson indicated he thought the neighbors would appreciate something more pleasing to the eye. He stated he lives on the east side of town so he could

City of Mount Vernon, Ohio  
**Board of Zoning Appeals**



**Minutes of Meeting**  
 Case 2014-BdZonApp-11  
 1117 East Vine Street

appreciate the deer issue. Mr. Alley indicated if he looked at the photo it looks like a six foot fence and they put decorative top on it and asked if that is considered a part of the fence. Mrs. Noonan indicated there are boards on the bottom. Mrs. Pomputius indicated the measurement is from the ground, not from the top slats. Mr. Alley asked if that would be considered a trellis over top of the fence, if a trellis would be considered a fence. Mrs. Noonan indicated if the whole thing, including the trellis is eight feet that should do it. Mrs. Nacey indicated her main concern is they are just going to do the vegetable garden, not from one side of the yard to the other all enclosed with an eight foot fence. Mrs. Noonan indicated just from where the screened fence is now she wanted to go one additional foot in each direction. Mr. Burson indicated that based on the drawing submitted it would be twenty-seven by thirty-four foot. Mrs. Noonan indicated the drawing is what she wants. Mr. Burson asked about proximity to the property line and Mrs. Noonan indicated it is right at the property line and cannot be moved forward. He stated he did drive by to get a feel for whether a fence would block vision and felt it didn't impact visibility of turning. Mrs. Pomputius indicated she would like to make a comment on 1155.15(e)(3) regarding the variance as requested. She stated they are requesting a variance that is peculiar to land or buildings but does not apply generally to land or buildings in the area and she believed that all the buildings in the area have a deer problem. Mrs. Pomputius went on to state that under the strict provisions of the zoning ordinance would be contrary to everything in the ordinance. She stated this would be unique in the City. Discussion turned to the requirements for four members to constitute a quorum for the Board and the voting requirement of three votes for a majority. Discussion also followed on the section noted earlier by Mrs. Pomputius and 1155.14. Mrs. Nacey asked about electric fence, Mrs. Noonan asked if it was legal and Mrs. Cordle indicated the City would not permit electric fence. Mr. Alley asked if there were comments from the audience. Mrs. Pomputius asked for comment and Mr. Kahrl came forward. He was duly sworn and presented testimony on the deer problem in the area. He addressed the increase in the deer population, patterns of travel, the impact on vegetation, how individuals in the neighborhood have dealt with deer and the implementation of hunting. Mrs. Nacey indicated they know deer are a problem in the area and if they give one variance how can they say no to the next one. Discussion followed on fencing in the area. Mr. Alley indicated the discussion was generating more concerns about the impact of fencing in the area. Mrs. Nacey indicated she was concerned about what happens in the future when others request an eight foot fence. Mrs. Pomputius indicated it would be setting a precedent. Mrs. Nacey indicated Mr. Kahrl had indicated the deer are roaming in the area and there are many houses in the area. Mr. Kahrl indicated he had put five foot wire fences around things in his yard and he did not plant a garden this year because of the deer. He indicated his neighbor has fencing around items in his yard. Mrs. Nacey indicated the fencing is around shrubbery, it's not an eight foot fence in the front yard; there is a difference. Mr. Kahrl indicated that circumstances change and Mrs. Pomputius responded that when circumstances change that is the time for the neighbors to petition City Council and request a modification of the ordinances. Mrs. Pomputius indicated they are asking for the Board to change the zoning code of the City because of one request. Mr. Kahrl agreed. Mrs. Pomputius indicated if he was concerned about this to bring his proposition before Council to discuss it. Mrs. Nacey indicated she would love to grant this variance, it is a beautiful garden, the fence is beautiful and if it wasn't for them setting a precedent she'd have no problem with it. Mr. Kahrl asked if he put up an eight foot fence in his back yard what would they think of that. Mrs. Nacey indicated the back yard is different from the front yard. Mrs. Pomputius indicated the back yard would still have to be a six foot fence. Mrs. Nacey indicated she thought it was totally different in the back than the front. She stated her point is it's in the front and they're setting a precedent. Mrs. Noonan understood the hesitation to grant the variance and she indicated it was being mixed with the ordinance needs to be changed. Mrs. Nacey indicated they are going by the ordinance they have. Mrs. Pomputius indicated that is why she suggested if they feel the ordinance needs to be changed in deference to the deer problem that this is not the place to change the ordinance, the place is to come before Council and request Council consider a change. Mrs. Noonan indicated if they are only talking about her property then they wouldn't need to be concerned for the future. Mrs. Nacey indicated they are just discussing whether they should or shouldn't be setting a precedent. Mr. Alley indicated if everybody is having the same issue and everybody comes to the Board because one was approved then they are setting a trend. Discussion followed on the area. Mrs. Noonan indicated that she just wanted to put something attractive and would like to do it six feet or three feet if that would do it. Mr. Alley asked if they were jumping over the current fence or going underneath it. Mrs. Noonan indicated they can't get under but they can get over because it is bendable. Mr. Burson asked if it was six or eight feet and she indicated the current one is eight. He then asked if the fence up right now was at issue. Mrs. Nacey indicated it is a temporary type of



City of Mount Vernon, Ohio  
**Board of Zoning Appeals**



**Minutes of Meeting**  
 Case 2014-BdZonApp-11  
 1117 East Vine Street

fence. Mr. Burson asked if they kept that if they would be violating the ordinance. Mrs. Cordle related the requirement for any fencing in the code within the front setback is thirty-six inches. She stated that beyond that setback they can only allow six feet. She went on to indicated that if it were in the back yard their fence could be six feet with no variance but that is the maximum allowable in that particular district. It was indicated in the front it is three feet in height to the building setback. Discussion followed on the current installation and whether it is a fence. Mr. Alley indicated he would say it is a fence and it is against the current building codes. Mrs. Nacey indicated the request has put the Board in a quandary. Mr. Alley asked if they would make the statement that it is a six foot fence with a trellis two feet above if Mrs. Noonan would accept that and Mrs. Noonan indicated she would be delighted. Mrs. Pomputius indicated that had come up before and that is not acceptable, that two feet above it, that trellis is considered an extension of the fence, it had come up about twenty years ago, it is an eight foot fence. Mr. Burson indicated he was concerned about the precedent being set too and tried to think about things that are different about this circumstance with one being she is not doing the whole front yard, just the vegetable garden. He stated there is still a lot of green space on either side. Mrs. Nacey indicated the good part is the fence is very aesthetically pleasing. Mrs. Nacey asked if there were any other persons wishing to speak and there were not.

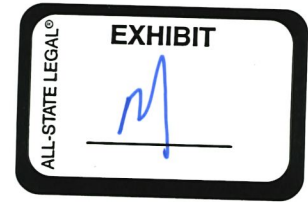
Mrs. Pomputius asked for a motion. **Mr. Alley made a motion that they approve this request as a six (6) foot fence with a decorative trellis of two (2) feet above the fence. Mrs. Nacey seconded the motion and asked that it be amended to only be around the vegetables and not the whole garden.** Mrs. Pomputius asked if before the vote there were any further questions or discussion. **Being none, Mrs. Pomputius called the roll and the following votes were cast: Mr. Alley, yes. Mr. Burson, yes. Mrs. Nacey, yes. Mrs. Pomputius, no. Mrs. Pomputius declared the variance granted.**

Mrs. Pomputius indicated the variance was granted but she stated the approval has been done in spite of regulation 1178.02 and in spite of 1173.18, in spite of 1155.14 subdivision 3, one through seven, specifically and declared the case closed.

  
 Mary-Anne Pomputius, Chair

  
 Judy L. Cordle, Recording Secretary

Ted W. and Tracie L. Kiger  
204 South Edgewood Road  
Mount Vernon, Ohio



September 27, 2022

Lacie Blankenhorn, Development Services Manager  
City of Mount Vernon  
40 Public Square  
Mount Vernon, Ohio 43050

Re: Fencing at 202 South Edgewood Road

Dear Ms. Blankenhorn:

We own parcel 59-00184000 at 204 South Edgewood Road, which abuts to the north a parcel (66-06582000), owned by Joan B Stallard, Trustee. We have no objection to the installation of a woven wire fence between our two properties.

Very truly yours,

Ted W. Kiger

A blue ink signature of Ted W. Kiger, written in a cursive style.

Tracie L. Kiger

A blue ink signature of Tracie L. Kiger, written in a cursive style.

Packet Pg. 15

Packet Pg. 75

Attachment: Letters of Support (3679 : 2022-Bza-37)  
Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)



Michael A. Webber  
200 South Edgewood Road  
Mount Vernon, Ohio 40305

September 27, 2022

Lacie Blankenhorn, Development Services Manager  
City of Mount Vernon  
40 Public Square  
Mount Vernon, Ohio 43050

Re: Fencing at 202 South Edgewood Road

Dear Ms. Blankenhorn:

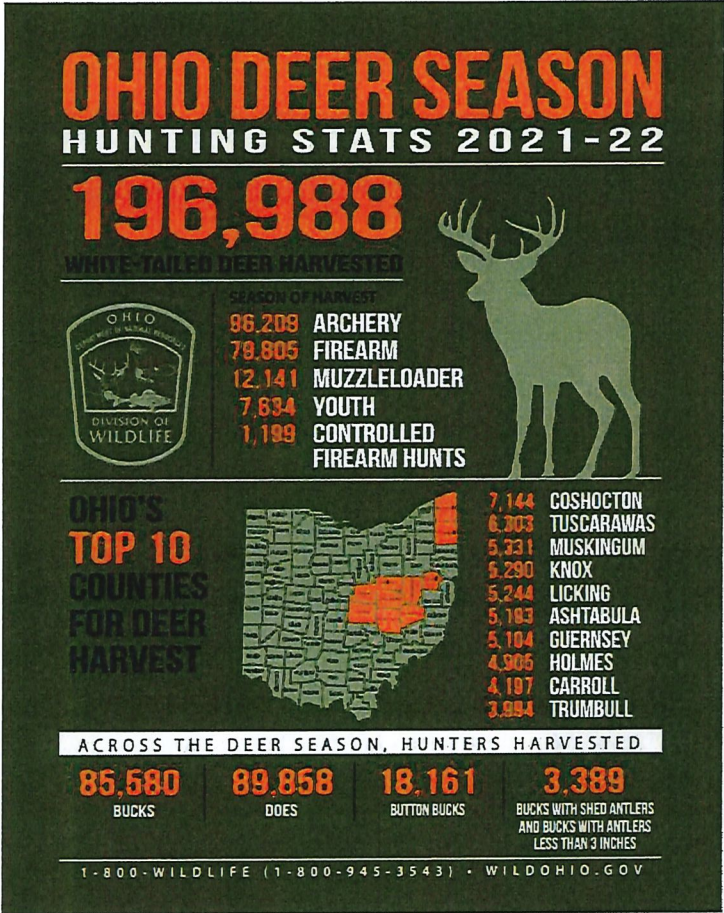
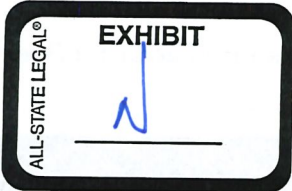
I own parcel 66-06083000 at 200 South Edgewood Road, which abuts to the south a parcel (66-06582000), owned by Joan B Stallard, Trustee. I have no objection to the installation of a woven wire fence between our two properties.

Very truly yours,



Michael A. Webber

Attachment: Letters of Support (3679 : 2022-Bza-37)  
Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)



Last season, hunters in Coshocton County checked 6,791 deer, the most of any county in Ohio. The statewide harvest in 2020-21 was 197,721.

Deer hunting occurs in all 88 counties, and Ohio hunters purchased 396,370 permits across all hunting seasons. Hotspots for deer hunting are found mostly in eastern Ohio, including Ashtabula, Coshocton, Tuscarawas, Muskingum, Guernsey, and Knox counties.

The popularity of hunting with archery equipment continues to grow, with 49% of deer taken during the 2021-22 archery season, including 35% using a crossbow and 14% using a vertical bow. Gun harvest contributed 51% of the final tally. This includes 19% with shotguns, 23% with straight-walled cartridge rifles, 9% with muzzleloaders, and less than 1% with handguns.

Across all deer seasons, hunters harvested 85,580 bucks, accounting for 43% of the total. Does represented 46% of the total with 89,858 taken, while 18,161 button bucks were taken, for 9%. Bucks with shed antlers and bucks with antlers less than 3 inches long accounted for 3,389 deer, or 2%. Weekly reports can be found on the [Deer Harvest Summary page](#) at wildohio.gov.

Ohio ranks fifth nationally in resident hunters and 11th in the number of jobs associated with hunting-related industries. Hunting generates more than \$853 million in Ohio through the sale of equipment, fuel, food, lodging, and more, according to the National Shooting Sports Foundations' [Hunting in America: An Economic Force for Conservation](#) publication.

Anyone interested in learning to hunt or becoming a mentor to a new hunter can visit the [Wild Ohio Harvest Community](#) page for information on how to get started, hunting-related workshops as well as special hunting opportunities for mentors and new hunters.

Follow the Division of Wildlife on [Twitter](#) and [Facebook](#) for instant news stories, outdoor recreation ideas, local wildlife information, and so much more. The [Your Wild Ohio Explorer](#) page provides wildlife success stories and ways to help wildlife throughout the seasons. Visit [wildohio.gov](#) to find locations to hunt, fish, trap, and view wildlife. Follow us on [Instagram](#) to view the best of Ohio's wildlife photography. And don't forget about the [HuntFish OH mobile app](#), available for Android and iOS users through the app store. Users can purchase licenses and permits as well as view wildlife area maps.

*The mission of the Division of Wildlife is to conserve and improve fish and wildlife resources and their habitats for sustainable use and appreciation by all. Visit [wildohio.gov](#) to find out more.*

*ODNR ensures a balance between wise use and protection of our natural resources for the benefit of all. Visit the ODNR website at [ohiodnr.gov](#).*

-30-

Editor's Note: High-resolution version of above [photo here](#). Full-size flyer from [above here](#), and black and white version [available here](#).

Editor's Note: A county list of all white-tailed deer checked by hunters during the 2021-22 deer hunting seasons is shown below. The first number following the county's name shows the harvest numbers for 2021-22, and the three-year average of deer harvested from 2018 to 2020 is in parentheses. A three-year average provides a better overall comparison to this year's harvest numbers, eliminating year-to-year variation because of weather, misaligned season dates, crop harvest, and other unavoidable factors. Harvest numbers below are raw data and subject to change.

Adams: 3,138 (2,895); Allen: 1,024 (1,024); Ashland: 3,650 (3,343); Ashtabula: 5,193 (5,165); Athens: 3,540 (3,329); Auglaize: 1,051 (930); Belmont: 2,836 (2,828); Brown: 2,493 (2,423); Butler: 1,627 (1,447); Carroll: 4,197 (3,810); Champaign: 1,405 (1,258); Clark: 822 (763); Clermont: 2,516 (2,475); Clinton: 627 (707); Columbiana: 3,545 (3,140); Coshocton: 7,144 (6,516); Crawford: 1,382 (1,247); Cuyahoga: 889 (943); Darke: 835 (793); Defiance: 1,745 (1,859); Delaware: 1,631 (1,522); Erie: 955 (1,024); Fairfield: 2,093 (1,943); Fayette: 315 (319); Franklin: 813 (790); Fulton: 896 (808); Gallia: 2,621 (2,372); Geauga: 2,177 (2,000); Greene: 875 (869); Guernsey: 5,104 (4,540); Hamilton: 1,419 (1,528); Hancock: 1,561 (1,394); Hardin: 1,423 (1,375); Harrison: 3,553 (3,480); Henry: 891 (789); Highland: 2,772 (2,584); Hocking: 2,918 (2,863); Holmes: 4,905 (4,419); Huron: 2,475 (2,323); Jackson: 2,764 (2,751); Jefferson: 2,352 (1,995); Knox: 5,290 (4,750); Lake: 962 (898); Lawrence: 1,613 (1,683); Licking: 5,244 (5,000); Logan: 2,219 (2,109); Lorain: 2,374 (2,240); Lucas: 652 (777); Madison: 652 (552); Mahoning: 2,110 (1,936); Marion: 986 (907); Medina: 2,591 (2,312); Meigs: 3,418 (3,056); Mercer: 931 (789); Miami: 864 (820); Monroe: 2,477 (2,414); Montgomery: 866 (784); Morgan: 3,235 (2,991); Morrow: 1,758 (1,644); Muskingum: 5,331 (4,915); Noble: 3,183 (3,002); Ottawa: 560 (536); Paulding: 1,269 (1,138); Perry: 2,730 (2,545); Pickaway: 679 (717); Pike: 1,862 (1,845); Portage: 2,660 (2,431); Preble: 1,060 (1,028); Putnam: 877 (827); Richland: 3,793 (3,553); Ross: 3,053 (2,931); Sandusky: 1,014 (954); Scioto: 2,121 (2,098); Seneca: 2,064 (1,965); Shelby: 1,104 (1,028); Stark: 3,201 (2,955); Summit: 1,776 (1,565); Trumbull: 3,994 (3,710); Tuscarawas: 6,303 (5,710); Union: 1,136 (999); Van Wert: 593 (556); Vinton: 2,433



Ohio’s Final 2021-22 Deer Harvest Report

February 07, 2022



COLUMBUS, Ohio — Ohio's 2021-22 deer hunting season concluded Sunday, Feb. 6, 2022, with 196,988 deer checked, according to the Ohio Department of Natural Resources (ODNR) Division of Wildlife. Ohio's average harvest compiled from the past three seasons is 184,746 deer.



Caption: Ohio's deer archery hunting season ended Sunday, Feb. 6. Ohio hunters harvested 196,988 deer during all seasons that began in September 2021.

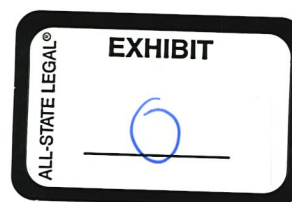
The final totals represent all deer harvested during archery, gun, muzzleloader, and youth hunting seasons that began on Sept. 25, 2021. Since September, hunters harvested 96,209 deer with archery equipment, while 79,805 deer were taken with firearms during the 2021 weeklong and two-day gun seasons. In addition, 12,141 deer were harvested with muzzleloaders in January 2022. Youth hunters found success during the November 2021 youth season with 7,634 deer checked.

“Ohio's deer population is one of the strongest in the nation, which is confirmed by these season totals,” said Division of Wildlife Chief Kendra Wecker. “Ohio is a national leader in deer management in part because of the tremendous cooperation between landowners and hunters. Thanks to all those who participated in the hunting season this year.”

The top 10 counties for deer harvested during the 2021-22 deer season include: Coshocton (7,144), Tuscarawas (6,303), Muskingum (5,331), Knox (5,290), Licking (5,244), Ashtabula (5,193), Guernsey (5,104), Holmes (4,905), Carroll (4,197), and Trumbull (3,994).



City of Mount Vernon, Ohio  
*Zoning Enforcement Officer*  
40 Public Square  
Mount Vernon, OH 43050  
Phone 740-393-2033; Fax 740-397-6595



6.A.1

City of Mount Vernon, Ohio  
**NOTICE OF VIOLATION**

**Date:** September 19, 2023

**Parcel Number:** 66-06582.000

**Property Address:** 202 S Edgewood RD

**Property Owner:** Joan B Stallard, Trustee  
202 S Edgewood RD  
Mount Vernon, Ohio 43050

**Permit Number:** **Violation**

**Violation:** Construction of a fence without acquiring a Zoning Permit.

**Section(s) Violated:** Chapter 1178.03, Zoning Permit Required

**Corrective Action Required:** Apply for a variance through the Board of Zoning Appeals.  
Additional corrective action may be required.

**\*Please be advised that you have (14) days after the date of this notice (October 3, 2023) to apply for a variance to avoid additional penalties and/or orders.**

Please contact me via email at DSM@mountvernonohio.org or by phone at 740-393-2033 if you have any questions. Failure to comply with this Notice of Violation could result in legal action.

By order of:

Lacie Blankenhorn  
Acting Zoning Enforcement Officer

Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)



FILED  
KNOX COUNTY  
IN THE COURT OF COMMON PLEAS  
KNOX COUNTY, OHIO

2023 MAY 30 AM 10:42

CHRISTY MILLIGAN STATION  
CLERK OF COURTS

JOAN B. STALLARD, TRUSTEE, et al.,  
Appellants

VS.

CASE NO. 22AP12-0323

CITY OF MOUNT VERNON BOARD  
OF ZONING APPEALS OHIO  
Appellees

**JUDGMENT ENTRY**

This matter came before the Court on May 22, 2023, for Oral Hearing on the Appeal filed December 2, 2022.

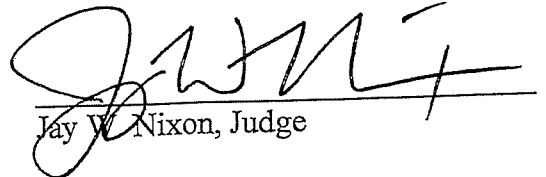
The following parties were present for the hearing: Mount Vernon City Law Director P. Robert Broeren, on behalf of the City of Mount Vernon, Board of Zoning Appeals; and Joan B. Stallard, Trustee, and James R. Stallard, Appellants, appearing with Attorney Jon K. Burton.

By agreement of the parties, the Court hereby **FINDS** and **ORDERS**:

The Appeal filed December 2, 2022, is hereby **DISMISSED**, without prejudice.

The City of Mount Vernon (the "City") shall give sixty (60) days advance notice of any anticipated zoning enforcement action regarding the fence erected on the property located at 202 South Edgewood Road, Mount Vernon, Ohio 43050, to James R. Stallard and Joan B. Stallard (the "Stallards"). If the Stallards file an application for a zoning variance within 60 days of receipt of such notice, then the City shall not take any enforcement action regarding the fence, and any enforcement action already initiated by the City shall be immediately stayed, until final resolution of said application, including any appeals. The City shall not charge the Stallards any filing fees for said application.

The costs of this action shall be paid from the deposit(s). Any additional fees are hereby waived.

  
Jay W. Nixon, Judge

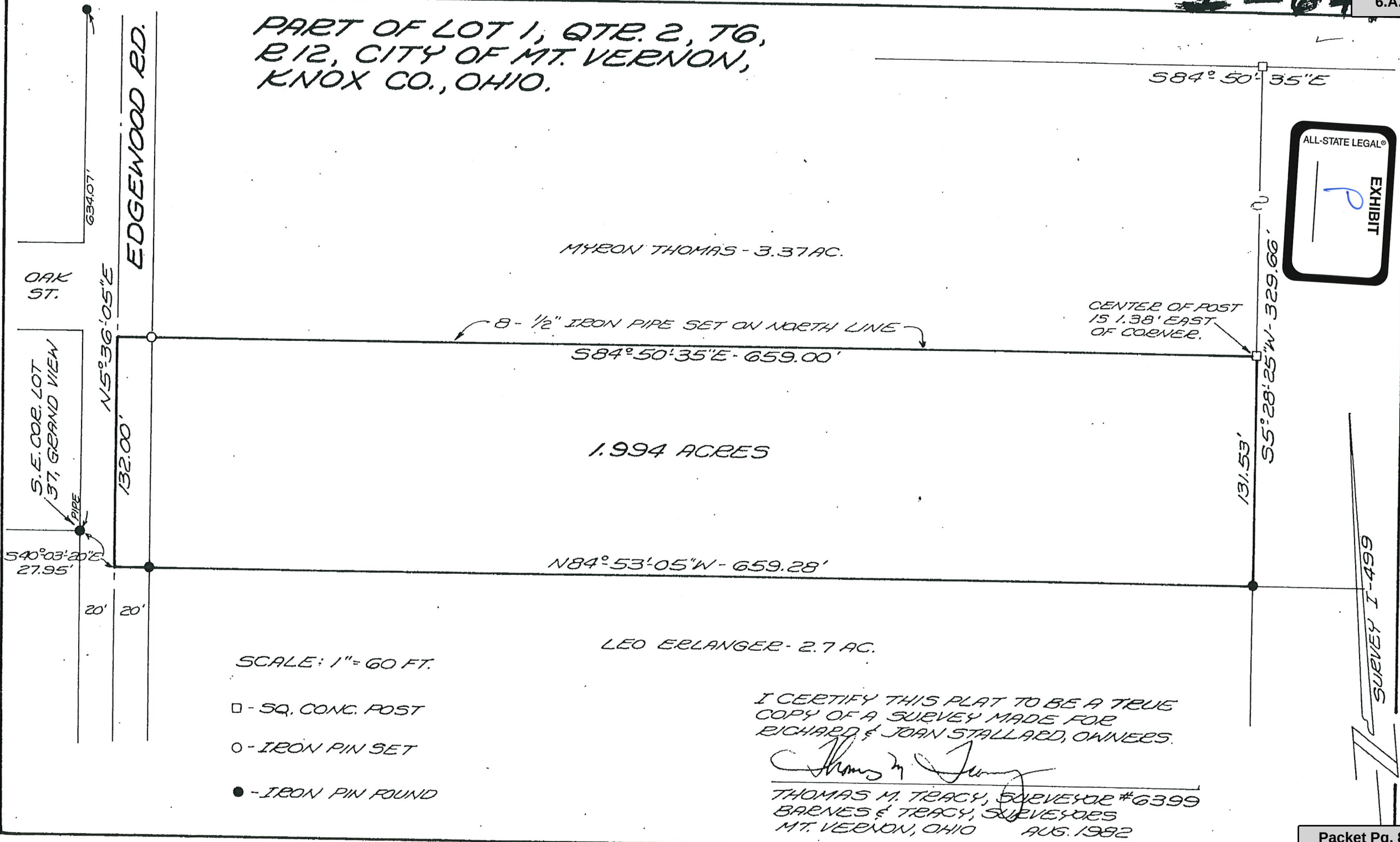
Cc: Jon K. Burton, Attorney for Appellants  
City of Mount Vernon Board of Zoning Appeals Ohio

JAY W. NIXON,  
JUDGE  
KNOX COUNTY  
PROBATE/JUVENILE COURT  
111 EAST HIGH ST.  
MOUNT VERNON, OH 43050  
740-393-6798

close code 18

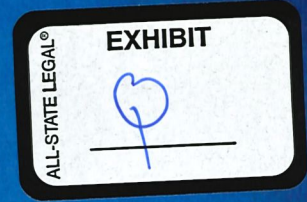
Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)

PART OF LOT 1, QTR. 2, T6,  
R 12, CITY OF MT. VERNON,  
KNOX CO., OHIO.



Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)





**Mount Vernon**

*An Innovative Community; Authentically Hometown*

## City of Mount Vernon Planning and Zoning Code

Partial Draft – February 23, 2023



## Chapter 1101: General Provisions

### 1101.01 PURPOSE (REVISED 1131.01 AND 1151.02)<sup>1</sup>

It is the purpose of this planning and zoning code to promote and protect the public health, safety, comfort, prosperity, convenience, and general welfare of the people of the City of Mount Vernon through the establishment of minimum regulations governing the subdivision, development, structures, and use of land. Furthermore, the more specific purpose of this planning and zoning code is to:

- (a) Implement the City of Mount Vernon Comprehensive Plan and other policies or plans adopted or approved by the City as they relate to the development of land;
- (b) Encourage and facilitate orderly, efficient, and appropriate growth and development;
- (c) Ensure and encourage the proper use of land to stabilize and preserve property values, to protect against congested and unsafe traffic conditions, to provide safety from hazards such as fire, flood, water and air contamination, and to guarantee adequate light, air, and open space to all residents, property owners, and businesses of the City;
- (d) Facilitate development of land uses according to a comprehensive design that ensures the availability of and provision for adequate traffic capacity, water and sewer service, schools, public parklands and other such public facilities;
- (e) Specify and regulate uses of land and the type, size and use of structures within each separate zoning district; and
- (f) Delineating zoning district boundaries in a manner which is comprehensive and includes all land and structures similar in nature and circumstance to the extent feasible.
- (g) Provide for adequate access to all areas of the City by people of all abilities and by varied modes of transportation;
- (h) Preserve unique historical and natural features of structures and land within the City;
- (i) Encourage interconnectivity of developments in order to provide multiple access points in and out of developments for safety purposes and traffic dispersion;
- (j) Improve the quality of life through protection of the City's total environment including, but not limited to, the prevention of air, water and noise pollution;
- (k) Avoid the inappropriate subdivision or development of lands and provide for adequate drainage, curbing of erosion, and reduction of flood damage;
- (l) Foster a more rational pattern of relationship between recreation, conservation, residential, business, commercial, industrial, and institutional uses for the mutual benefit of all.;
- (m) Implement the provisions of Ohio Revised Code Chapter 713; and
- (n) Implement any other common law rulings.

### 1101.02 AUTHORITY (REVISED 1131.02, 1151.01, & 11510.03)

#### (a) General Authority

- (1) The authority for the preparation, adoption, and implementation of this code is derived from Ohio Revised Code (ORC) Chapters 711 and 713, which permit the adoption of uniform rules and regulations governing the zoning and subdivision of land.
- (2) Nothing in this code shall be construed to limit City Council in the exercise of all of its powers to zone or redistrict now or hereafter authorized by the Ohio Constitution or Ohio statutes.

#### (b) References to the Ohio Revised Code (ORC) or the Ohio Administrative Code (OAC)

Whenever any provision of this code refers to or cites a section of the ORC (as amended) or the OAC (as amended), and that section is later amended or superseded, this code shall be deemed amended to refer to the amended section, or the section that most nearly corresponds to the superseded section.

<sup>1</sup> The parenthetical references in the main headings are temporary cross-references to language in the existing planning and zoning code to show where the language in this draft was drawn from, revised, or where the language is new.



### 1101.03 TITLE (NEW)

These regulations shall be known and may be cited as the "Planning and Zoning Code of the City of Mount Vernon," or may be referred to as the "planning and zoning code," the "zoning code," or the "code." This code may also be referred to as Part 11 of the Codified Ordinances of the City of Mount Vernon, Ohio.

### 1101.04 APPLICABILITY (REVISED 1131.02, 1151.01, 11510.03, & 1151.05)

- (a) No structure or part thereof shall be placed upon or moved onto land, erected, constructed, reconstructed, enlarged or structurally altered, nor shall any building or land be used or occupied which does not comply with the district regulations established by this code for the district in which the building, structure or land is located.
- (b) The provisions of this code shall apply to all land, buildings, structures, and uses of land, buildings, and structures, or portions thereof, located within the municipal boundaries of the City of Mount Vernon in Knox County, Ohio. The provisions of this code are the minimum requirements adopted to meet the purposes of this code as established in Section [1101.01: Purpose](#).
- (c) The regulations of this code shall also govern all subdivision of land and public improvements within the corporate limits of the City of Mount Vernon.<sup>3</sup>
- (d) The regulations established for each district in this code shall apply uniformly to each class or type of use, land, building, or structure, unless modified, varied or waived as provided herein.
- (e) No building, structure, or land shall be used or occupied and no building or structure or part thereof shall be structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

### 1101.05 EFFECTIVE DATE (REVISED 1151.08)

This code was originally adopted by City Council on <><sup>4</sup>, as amended. Any amendment to this code shall become effective from and after the date of its approval and adoption, as provided by law.

### 1101.06 CONSISTENCY WITH ADOPTED PLANS (NEW)

The administration, enforcement, and amendment of this code should be consistent with the most recently adopted version of the City of Mount Vernon's Strategic Plan, parks master plan, active transportation plan, downtown plan, and Knox County Comprehensive plan, as such plans may be amended. Such plan, or references to such plan, shall also include other adopted or approved plans within the City that relate to development including, but not limited to, a comprehensive plan, land use plan, thoroughfare plan, parks and recreation plan, etc. Amendments to this code should maintain and enhance the consistency between this code and the City of Mount Vernon Strategic Plan or any other adopted or approved City plans.

### 1101.07 INTERPRETATION AND CONFLICTS

- (a) Interpretation of Provisions (Existing 1151.06)  
The provisions of this code shall be held to be the minimum requirements, adopted for the promotion of the public health, safety, comfort, convenience, prosperity, and general welfare.
- (b) Conflict with Other Public Laws, Ordinances, Regulations, or Permits (Revised 1151.06)  
This code is intended to complement other City, State, and Federal regulations that affect land use and the division of land. This code is not intended to revoke or repeal any other public law, ordinance, regulation, or permit. However, where conditions, standards, or requirements imposed by any provision of this code are more restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions of this code shall govern.

<sup>3</sup> We had to remove the three-mile subdivision review provision in the current code because the city no longer qualifies to review such subdivision (all of the townships have zoning, there is a regional planning commission, and county subdivision standards).

<sup>4</sup> This is an amendment to the code so it would be good if we could include the date for the original code. Note that the <> symbol is a placeholder for future cross-references or other pieces of information.



**(c) Repeal of Conflicting Ordinance (Revised 1151.08)**

All ordinances or parts of ordinances in conflict with this code or inconsistent with the provisions of this code are hereby repealed to the extent necessary to give this code full force and effect.

**1101.08 RELATIONSHIP WITH THIRD-PARTY PRIVATE AGREEMENTS (NEW)<sup>5</sup>**

- (a) This code is not intended to interfere with or abrogate any third-party private agreements including, but not limited to, easements, covenants, or other legal agreements between third parties. However, where this code proposes a greater restriction or imposes higher standards or requirements than such easement, covenant, or other private third-party agreement, then the provisions of this code shall govern.
- (b) Nothing in this code shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this code.
- (c) In no case shall the City be obligated to enforce the provisions of any easements, covenants, or other agreements between private parties, even if the City is a named party in and has been granted the right to enforce the provisions of such agreement.

**1101.09 SEPARABILITY CLAUSE (REVISED 1151.07)**

- (a) If any court of competent jurisdiction invalidates any provision of this code, then such judgment or ruling shall not affect the validity and continued enforcement of any other provision of this code.
- (b) If any court of competent jurisdiction invalidates the application of any provision of this code to a particular property, structure, or situation, then such judgment or ruling shall not affect the application of that provision to any other property, structure, or situation not specifically included in that judgment or ruling.
- (c) If any court of competent jurisdiction invalidates any condition attached to the approval of a development review application, then such judgment or ruling shall not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment or ruling.

**1101.10 TRANSITIONAL RULES (NEW)****(a) Purpose**

The purpose of these transitional rules is to resolve the status of properties with pending applications or recent approvals, and properties with outstanding violations, on the effective date of this code amendment.

**(b) Violations Continue**

- (1) Any violation that existed at the time this amendment became effective shall continue to be a violation under this code and is subject to penalties and enforcement under Chapter <> (Enforcement and Penalties) unless the use, development, construction, or other activity complies with the provisions of this code.
- (2) Payment shall be required for any civil penalty assessed under the previous regulations, even if the original violation is no longer considered to be a violation under this code.

**(c) Nonconformities Continue**

- (1) Any nonconformity that was legally established and that existed at the time this amendment became effective shall continue to be a legal nonconformity under this code as long as the situation that resulted in the nonconforming status under the previous code continues to exist. All such nonconformities shall be controlled by Chapter <> (Nonconformities).
- (2) If a legally established nonconformity that existed at the time this amendment became effective becomes conforming because of the adoption of this amendment, then the situation will be considered conforming and shall no longer be subject to the regulations pertaining to nonconformities.
- (3) Any nonconformity that was not legally established in accordance with the provisions of this code shall not be protected and shall be considered a violation of this code.

<sup>5</sup> This section is not necessary but does provide language the staff can point to when someone asks the city to enforce a deed restriction.



**(d) Processing of Applications Commenced or Approved Under Previous Regulations****(1) Pending Projects**

- A. Any complete application that has been submitted or accepted for approval, but upon which no final action has been taken by the appropriate decision-making body prior to the effective date of this code, shall be reviewed in accordance with the provisions of the regulations in effect on the date the application was deemed complete by the City.
- B. If a complete application is not filed within the required application filing deadlines in effect prior to the adoption of this code, the application shall expire and subsequent applications shall be subject to the requirements of this code.
- C. Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.
- D. An applicant with a pending application may waive review available under prior regulations and request review under the provisions of this code by requesting such waiver, in writing, to the Zoning Enforcement Officer.

**(2) Approved Projects**

- A. Approved planned developments, variances, certificates of appropriateness, conditional uses, zoning permits, or other approved plans or permits that are valid on the effective date of this code shall remain valid until their expiration date, where applicable.
- B. Any building or development for which a permit or certificate was granted prior to the effective date of this code shall be permitted to proceed to construction, even if such building or development does not conform to the provisions of this code, as long as the permit or certificate remains valid.
- C. If the development for which the permit or certificate is issued prior to the effective date of this code fails to comply with the time frames for development established for the permit or certificate, the permit or certificate shall expire, and future development shall be subject to the requirements of this code.

**(e) Vested Rights**

The transitional rule provisions of this section are subject to Ohio's vested rights laws.

**1101.11 RESTORATION OF UNSAFE BUILDINGS (NEW)**

Nothing in this code shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

**1101.12 USE OF GRAPHICS, TABLES, ILLUSTRATIONS, FIGURES, AND CROSS-REFERENCES (NEW)**

- (a) Graphics, illustrations, and figures are provided for illustrative purposes only and shall not be construed as regulations. Where a conflict may occur between the text and any graphic, illustration, or figure, the text shall control.
- (b) In some instances, cross-references between chapters, sections, and subsections are provided that include the number along with the name of the referenced chapter, section, or subsection. Where a conflict may occur between the given cross-reference number and name, the name shall control.
- (c) A table shall be considered text for the purposes of this code, unless specifically identified as a figure.

**1101.13 BURDEN OF PROOF (NEW)**

- (a) The burden of demonstrating that an application, development, structure, or use of land or structures subject to this code complies with applicable review and approval standards rests with, and is the responsibility of, the applicant.
- (b) The burden of proof also rests with, and is the responsibility of, any person claiming that a nonconformity was established legally under a previous amendment of this code.

- (c) The burden of proof is not the responsibility of the City or other parties to demonstrate that the standards have (or have not) been met by the applicant or person responsible for the application, development, use of land or structure, or nonconformity with this code.



# Chapter 1102: Decision-Making Roles and Authorities

## 1102.01 PURPOSE (NEW)

The purpose of this chapter is to set forth the powers and duties of the City of Mount Vernon's various review boards and administrative staff with respect to the administration and enforcement of the provisions of this code.

## 1102.02 REVIEW AUTHORITY NAMES, REFERENCES, AND DELEGATION (NEW)

### (a) Review Authority Names and References

For the purposes of this code, the formal names of the administration and decision-making authorities identified above may also be referred to abbreviated names as identified below:

- (1) The City of Mount Vernon City Council may be hereafter also be referred to as "City Council" or "Council."
- (2) The City of Mount Vernon Municipal Planning Commission may be hereafter also be referred to as the "Planning Commission" or "MPC."
- (3) The City of Mount Vernon Board of Zoning Appeals may be hereafter also be referred to as the "Board" or "BZA."
- (4) The City of Mount Vernon Historical Review Commission may be hereafter also be referred to as the "Historical Review Commission" or "HRC."
- (5) The City of Mount Vernon Zoning Enforcement Officer may be hereafter also be referred to as the "Zoning Enforcement Officer" or "ZEO."

### (b) Delegation of Authority

Whenever a provision appears requiring the head of a department or another officer or employee of the City to perform an act or duty, that provision shall be construed as authorizing the department head or officer to delegate the responsibility to subordinates, unless the terms of the provision specify otherwise.

## 1102.03 CITY COUNCIL (REVISED 1155.04)

In addition to any other authority granted to the City Council by ordinance or State law, the City Council shall have the following powers and duties, as it relates to this code:

- (a) Initiate, hear, review, and make decisions related to amendments to the text of this code or the zoning map;
- (b) Hear, review, and make decisions related to Planned Developments in accordance with Chapter <> (Planned Developments);
- (c) Review and accept, where appropriate, any proposed dedication of streets, utilities, and other public improvements required by this code;
- (d) Establish fees for development review procedures, certificates, and permits outlined in this code;
- (e) Perform any other duties related to the administration and enforcement of this code as authorized by this code and the ORC.

## 1102.04 REVIEW BOARDS

For the purposes of this code, there shall be review boards established for the administration and enforcement of this code including the Planning Commission, BZA, and HRC.

### (a) General Rules and Regulations for All Review Boards

The following shall apply to the Planning Commission, BZA, and HRC

- (1) All members of a review board, at the date of their respective appointments, shall be residents of the City and shall continue to be residents of the City during the terms of their office with the exception of the Safety Service Director.
- (2) Members of the review boards shall not be employed or appointed to any Mount Vernon department or office except where the ORC mandates such or the requirements of this chapter allow for.

- (3) Members of any review board shall be removable for nonperformance of duty, misconduct in office or other cause, by the Mayor, upon written charges having been filed with the Mayor and after a public hearing by City Council has been held regarding such charges. A copy of the charges shall be served upon the member at least 10 days prior to the hearings, either personally, by registered mail or by leaving the same at their usual place of residence. The member shall be given opportunity to be heard and answer such charges.
- (4) The Chairperson of each review board shall advise City Council, by letter, if any member of the applicable review board has been absent from all meetings held during any period of 90 consecutive days or who has been absent from a total of one-fourth of the regular meetings during a calendar year. City Council shall consider removing such member.
- (5) A vacancy occurring during the term of any member of a review board shall be filled through the same manner as the position was originally filled, for the unexpired term in a manner authorized for the original appointment.
- (6) The review boards may, by a majority vote of its entire membership at the time of consideration, adopt bylaws or rules for the governance of said board, provided they are consistent with State law and with any ordinances of the City.
- (7) The review boards shall keep a record of their meetings and hearings, which shall be a public record.
- (8) All meetings of the review boards shall be open to the public, except as exempted by law.
- (9) The departments, divisions, and agencies of the City shall cooperate with and assist the boards in implementing the purposes for which they are formed.
- (10) **Meetings**
  - A. Each review board shall hold such meetings as it may require for conducting its business. Prior to the end of each year, the members shall, by motion, determine the dates of its regular meetings for the succeeding year.
  - B. The Chairperson of each board or the ZEO may cancel a meeting if there is no pending business to be conducted.
  - C. Special meetings may be called by the Chairperson or by a vote of the applicable review board at its regular meeting.
  - D. At either the first meeting or the last regular meeting of each year, or when practical, each review board shall elect a Chairperson who shall serve for a one-year term. The boards may also elect a Vice-Chairperson, who shall also serve for a one-year term. These officers shall be elected from among the members of the applicable boards. During the temporary absence of the Chairperson, the Vice-Chairperson, where elected, shall fulfill the duties of the Chairperson.

**(b) Organization and Roles of the Municipal Planning Commission (MPC) (Revised 1155.03)**

- (1) **Establishment**  
The City of Mount Vernon MPC is hereby established by City Council pursuant to Chapter 713 of the ORC.
- (2) **Membership and Terms**  
Membership of the MPC shall be in accordance with Chapter 713 of the ORC, including the length of terms.
- (3) **Alternates**
  - A. The Mayor may appoint up to two alternate members, with approval from City Council, for a term of one year each. Such appointments shall only be for people who may serve as alternates for members of the MPC that are not the Mayor or the Director of Public Service.
  - B. The Mayor and the Director of Public Service are authorized to designate a person to serve as an alternate on their behalf.
  - C. An alternate member shall take the place of an absent regular member at any meeting of the MPC. An alternate shall also take the place of a regular member that has to recuse themselves or abstain from a discussion or action.



- D. An alternate member shall meet the same appointment criteria as a regular member for all members except the Mayor and Director of Public Service.
- E. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter the absent member is authorized and eligible to vote for provided the member attended all pertinent public meetings or hearings.
- F. When a vacancy occurs, alternate members do not automatically become full members of the MPC. Alternate members have to be appointed by the Mayor to replace a full member upon a vacancy.

**(4) Roles and Powers of the MPC**

The MPC shall have the following roles and powers:

- A. Initiate, hear, review, and make recommendations to City Council for the approval of a plans for the future physical development and improvement of the City, based upon utility, convenience and beauty, physical needs, density and the social welfare and physical well-being of the people;
- B. Initiate, hear, review, and make recommendations to City Council related to amendments to the text of this code or the zoning map;
- C. Hear, review, and make decisions on conditional use permits<sup>8</sup> in the respective zoning district;
- D. Hear, review, and make recommendations or decisions related to Planned Developments in accordance with [Chapter <> \(Planned Developments\)](#);
- E. Review and make decisions on the preliminary subdivision plats and final subdivision plats for major subdivisions;
- F. Review and make decisions on requests for subdivision modifications;
- G. Hear, review and make decisions on alternative equivalency review applications, when the proposed alternative equivalency review provision is not related to a certificate of appropriateness application;
- H. Consider, investigate, and report upon any special matter or question coming within the scope of its work as requested by City Council, or the administration; and
- I. Perform any other duties related to the administration and enforcement of this code as authorized by this code, by ordinance of City Council, and/or by the ORC.

**(5) Quorums and Decisions**

- A. Any combination of three or more regular or alternate members of the MPC shall constitute a quorum.
- B. A motion made on a decision shall carry when at least three members of the MPC concur.
- C. General business items that do not include decisions on applications, such as continuances or approval of minutes, shall only require a majority of the quorum to concur.
- D. A member of a MPC shall not be qualified to vote if that member did not attend the public hearing or meeting of the applicable case subject to a decision unless he or she has read or listened to the transcript of the public hearing or meeting, as applicable.
- E. A member of the MPC shall not be qualified to vote if they have a direct or indirect interest in the issue subject to the application or any other conflict of interest.

**(c) Organization and Roles of the Board of Zoning Appeals (BZA) (Revised 1155.05)**

**(1) Establishment**

The City of Mount Vernon Board of Zoning Appeals is hereby established.

**(2) Membership and Terms**

- A. The BZA shall be composed of a total of five members appointed by the Mayor and approved by City Council.

<sup>8</sup> After discussions with staff, a change was made to have the Planning Commission review conditional use permit applications rather than the BZA, a common practice by many communities across the state.

- B. The term of all members shall be five years and their terms shall be so arranged that the term of one member shall expire each year.

(3) **Alternates**

- A. The Mayor may appoint up to two alternate members, with approval from City Council, for a term of one year each.
- B. An alternate member shall take the place of an absent regular member at any meeting of the BZA. An alternate shall also take the place of a regular member that has to recuse themselves or abstain from a discussion or action.
- C. An alternate member shall meet the same appointment criteria as a regular member.
- D. When attending a meeting on behalf of an absent member, the alternate member may vote on any matter the absent member is authorized and eligible to vote for provided the member attended all pertinent public meetings or hearings.
- E. When a vacancy occurs, alternate members do not automatically become full members of the BZA. Alternate members have to be appointed by the Mayor to replace a full member upon a vacancy.

(4) **Roles and Powers of the BZA**

The BZA shall have the following roles and powers to:

- A. Hear, review, and decide on appeals of any administrative decision where it is alleged there is an error in any administrative order, requirement, decision, or determination made by the Historical Review Commission, ZEO, or other staff member<sup>10</sup> authorized to make such decisions or orders, unless another appeals board is established by this code;
- B. Hear, review, and decide on variance requests in accordance with the applicable provisions of this code;
- C.
- D. Hear, review and make decisions on requests for substitution of nonconforming uses in accordance with Section <>.
- E. Resolve any disputes with respect to the precise location of a zoning district boundary, using, where applicable, the standards and criteria of Section <>;
- F. To permit the completion, restoration, reconstruction, expansion or extension of a nonconforming use where the enforcement of the regulations pertaining to nonconforming lots or buildings will result in unnecessary hardship (See Section <>.); and
- G. Perform any other duties related to the administration and enforcement of this code as authorized by this code or the ORC.

(5) **Quorums and Decisions**

- A. Any combination of three or more regular or alternate members of the BZA shall constitute a quorum.
- B. A motion made on a decision shall carry when at least three members of the BZA concur.
- C. General business items that do not include decisions on applications, such as continuance or approval of minutes, shall only require a majority of the quorum to concur.
- D. A member of a BZA shall not be qualified to vote if that member did not attend the public hearing of the applicable case subject to a decision unless he or she has read or listened to the transcript of the public hearing.
- E. A member of the BZA shall not be qualified to vote if they have a direct or indirect interest in the issue subject to the application or any other conflict of interest.

(6) **Special Provisions for BZA Hearings**

- A. the BZA has appellate jurisdiction relative to conditional uses, appeals, and variances.

<sup>10</sup> Depending on later discussions related to administrative decisions made by the Planning Commission or HRC and appeals, this may have to be altered to allow for appeal to BZA if that is what the City wants versus going straight to court.



- B. The BZA shall make findings and conclusions which support all of its decisions. The findings and conclusions shall set forth and demonstrate the manner in which the decision carries out and helps administer and enforce the provisions of this code, including the application of any review criteria for the subject application.
- C. The BZA shall have the power to subpoena and compel the attendance of witnesses, to administer oaths, to compel testimony and to produce reports, findings and other evidence pertinent to any issue referred to it for decision.
- D. Any person may appear and testify at a hearing, either in person or by duly authorized agent or attorney. Comments may also be submitted in writing or verbally to the Community Development Department, and provided to the BZA in advance of the hearing.
- E. The privilege of cross-examination of witnesses shall be accorded all interested parties or their attorney.

(7) **Record of Decisions**

Immediately following the BZA's decision, the applicant shall be notified of the decision, in writing, including any conditions of approval.

(d) **Organization and Roles of the Historical Review Commission (HRC) (Revised 1172.04)**

(1) **Establishment**

The City of Mount Vernon Historical Review Commission (HRC) is hereby established.

(2) **Membership and Terms**

- A. The HRC shall be composed of the members of the MPC plus two additional members appointed annually by the Mayor and confirmed by City Council. These two additional members shall represent the historical districts and at least one of them shall be a resident freeholder from within the districts.
- B. An attempt shall be made to appoint such additional members from fields or professions related to historic preservation, architecture, building inspection, City planning, or similar directly related fields.
- C. The term of the MPC members of HRC shall be that established by Section <>. For the two additional members, their terms shall be one year.

(3) **Alternates**

- A. Only alternates approved for the MPC may used as alternates for the MPC members on HRC. See Section <>. No alternates may be appointed for the two additional members appointed who are not members of the MPC.
- B. An alternate member of MPC shall take the place of an absent MPC member at any meeting of the HRC. An alternate shall also take the place of a regular MPC member that has to recuse themselves or abstain from a discussion or action.
- C. When attending a meeting on behalf of an absent MPC member, the alternate MPC member may vote on any matter the absent MPC member is authorized and eligible to vote for provided the member attended all pertinent public meetings or hearings.
- D. When a vacancy occurs, alternate members do not automatically become full members of the HRC. Alternate members have to be appointed by the Mayor to replace a full member upon a vacancy.

(4) **Roles and Powers of the HRC**

The HRC shall have the following roles and powers to:

- A. Review and make decisions with respect to certificates of appropriateness regarding any change, demolition, construction, preservation, restoration, reconstruction, and rehabilitation of any structure or property within its jurisdiction;
- B. Review and make decisions on certain alternative equivalent compliance applications as it relates to historic district guidelines;
- C. Make recommendations regarding amendments to this code as they affect historic districts and related guidelines and standards;

- D. Act in an advisory role to other officials and departments of local government regarding the protection of local cultural resources; and
- E. Perform any other duties related to the administration and enforcement of this code as authorized by this code or by ordinance of City Council.

(5) **Quorums and Decisions**

- A. Any combination of four or more regular or alternate members of the HRC shall constitute a quorum.
- B. A motion made on a decision shall carry when at least four members of the HRC concur.
- C. General business items that do not include decisions on applications, such as continuances or approval of minutes, shall only require a majority of the quorum to concur.
- D. A member of a HRC shall not be qualified to vote if that member did not attend the public hearing or meeting of the applicable case subject to a decision unless he or she has read or listened to the transcript of the public hearing or meeting, as applicable.
- E. A member of the HRC shall not be qualified to vote if they have a direct or indirect interest in the issue subject to the application or any other conflict of interest.

## 1102.05 ADMINISTRATIVE STAFF<sup>13</sup>

(a) **Zoning Enforcement Officer (ZEO) (Revised 155.01 and 155.02)**

(1) **Establishment**

The position of City of Mount Vernon ZEO shall be established to aid in the administration and enforcement of this code. The ZEO may be provided with the assistance of such other persons as the Safety Service Director may direct.

(2) **Roles and Powers of the ZEO**

The ZEO shall have the following roles and powers to:

- A. Enforce the provisions of this code. The ZEO shall have all necessary authority on behalf of the City to administer and enforce the provisions of this code. Such authority shall include the ability to order, in writing, the remedy of any condition found in violation of this code and the ability to bring legal action to ensure compliance with the provisions including injunction, abatement, or other appropriate action or proceeding. All officials and employees of the City may assist the ZEO by reporting to the ZEO any new construction, reconstruction, land uses, or violations that are observed;
- B. Review and provide comments and reports, as needed, for the various procedures where the MPC, HRC, BZA, or City Council reviews an application;
- C. Review and make administrative decisions on zoning permits and administrative waiver applications;
- D. Review and make decisions on questions of interpretation related to this code;
- E. Accept, review for completeness, and respond to questions regarding review procedure applications established in this code;
- F. Participate in any pre-application meetings as may be requested by a property owner or potential applicant in accordance with this code;
- G. Coordinate the City's administrative review of applications required by this code, including, but not limited to, rezoning applications, conditional use applications, and subdivision plats;
- H. Review and make decisions on minor subdivision applications;
- I. Maintain in current status the official zoning map;
- J. Serve as the Secretary of the MPC, BZA, and HRC;
- K. Refer requests for appeals of decisions to the BZA pursuant to the procedures established in Section [6.02](#);

<sup>13</sup> Depending on discussion regarding staff level decision-making, we may need to add in references to the Secretary of the Planning Commission and/or the City Engineer.



- L. Provide such technical and consultation assistance as may be required by the BZA, HRC, the MPC, and City Council, in the exercise of their duties relating to this code;
- M. Maintain permanent and current records of all applications and the decisions related to those applications;
- N. Review, inspect property, and make decisions on compliance with the provisions of this code;
- O. Investigate complaints and issue citations or other forms of enforcement and penalties for any violations and keep adequate records of all violations;
- P. Order discontinuance of any illegal work being done;
- Q. Revoke a zoning permit issued contrary to this code or based on a false statement or misrepresentation on the application;
- R. Recommend to the MPC revocation of conditional use permits where they believe the terms of permits have been violated;
- S. Take any other action authorized by this code to ensure compliance with or to prevent violation(s) of this code;
- T. Prepare and submit an annual report to the City Council and MPC on the administration of this code, setting forth such information as may be of interest and value in advancing and furthering the purpose of this code. Such report shall include recommendations concerning the schedule of fees; and
- U. Undertake any additional work as specified by this code or as directed by the review boards or City Council.

(3) **Decisions of the ZEO**

A decision of the ZEO may be appealed to the BZA in accordance with Section <> (Appeals) unless another appeals board is established by this code.

# Chapter 1103: Review Procedures

## 1103.01 PURPOSE (NEW)

This chapter establishes the various administrative and board level review procedures used for the administration, interpretation, and enforcement of this code along with the review criteria used for decision-making purposes on individual applications.

## 1103.02 COMMON REVIEW REQUIREMENTS (NEW)<sup>15</sup>

The requirements of this section shall apply to all applications and procedures subject to development review procedures established in this code, unless otherwise stated.

(a) Summary of Review Procedures

Table 1103-1 provides a list of all review procedures utilized in the administration and enforcement of this code, the applicable review authority, the type of review hearing or meeting, and the decision-making responsibility of each review authority.

| TABLE 1103-1: SUMMARY OF REVIEW PROCEDURES                                                                                                                           |                            |              |      |      |      |       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------|------|------|------|-------|
| Review Procedure                                                                                                                                                     | See Section:               | City Council | MPC  | BZA  | HRC  | Staff |
| Code and Text Amendment                                                                                                                                              | <a href="#">1103.03</a>    | PH/D         | PH/R |      |      |       |
| Alternative Equivalency Review                                                                                                                                       | <a href="#">1103.04</a>    |              | PH/D |      | PH/D |       |
| Certificate of Appropriateness (COA)                                                                                                                                 | <a href="#">1103.05</a>    |              |      |      | PM/D |       |
| Conditional Use Permit                                                                                                                                               | <a href="#">1103.07</a>    |              | AH/D |      |      |       |
| Variance                                                                                                                                                             | <a href="#">1103.07</a>    |              |      | AH/D |      |       |
| Appeals                                                                                                                                                              | <a href="#">1103.07</a>    |              |      | AH/D |      |       |
| Zoning Permit                                                                                                                                                        | <a href="#">1103.08</a>    |              |      |      |      | D     |
| Administrative Waiver                                                                                                                                                | <a href="#">1103.08(f)</a> |              |      |      |      | D     |
| Minor Subdivision                                                                                                                                                    | <a href="#">1103.09</a>    |              |      |      |      | D     |
| Major Subdivision: Preliminary Plat                                                                                                                                  | <a href="#">1103.10</a>    |              | PM/D |      |      |       |
| Major Subdivision: Subdivision Modification                                                                                                                          | <a href="#">1103.10</a>    |              | PM/D |      |      |       |
| Major Subdivision: Final Plat and Improvement Plans                                                                                                                  | <a href="#">1103.10</a>    |              | PM/D |      |      |       |
| Major Subdivision: Acceptance of Improvements                                                                                                                        | <a href="#">1103.10</a>    | PM/D         |      |      |      |       |
| Interpretation of the Code                                                                                                                                           | <a href="#">1103.11</a>    |              |      |      |      | D     |
| Abbreviations                                                                                                                                                        |                            |              |      |      |      |       |
| PH = Public Hearing                      AH = Adjudication Hearing                      PM = Public Meeting<br>R = Recommendation                      D = Decisions |                            |              |      |      |      |       |

Communication: Exhibits G-Q Submitted by Burton for Stallard Fence Case 2023-BZA-23 (General)

<sup>15</sup> This is a new section, proposed in the code audit, that will consolidate all information that is generally applicable to all review procedures.



**(b) Authority to File Applications**

- (1) Unless otherwise specified in this code, applications for development review procedures defined in this code may be initiated by:
  - A. An owner of the property that is the subject of the application; or
  - B. An agent authorized, in writing, by the owner, which may include a lessee of the property, manager, attorney, or other representative.
- (2) The MPC or City Council may initiate code text and map amendments under this code, with or without written authorization or application from the property owners who may be affected.

**(c) Application Submission Schedule**

The schedule for the submission of applications in relation to scheduled meetings and hearings of the review bodies shall be established by the ZEO, and made available to the public.

**(d) Application Contents**

- (1) Applications required under this code shall be submitted to the Development Services office ZEO.
- (2) All applications shall be in a form and in such numbers as established by the ZEO, and made available to the public as part of application forms.
- (3) Applications shall be accompanied by a fee, if required, in accordance with the fee ordinance adopted by City Council pursuant to Section [1103.02\(g\): Fees](#).

**(4) Complete Application Determination**

- A. The ZEO shall only initiate the review and processing of applications submitted under this code if such application is determined to be complete.
- B. An application shall be determined to be complete if the applicant has submitted all of the forms, maps, and other submittal requirements required for the specified application. The ZEO may waive the submission of requirements if such requirements are not needed due to the type or scale of development, or are unnecessary for determining compliance with this code. Such waiver shall be provided to the applicant in writing as part of the record.
- C. The ZEO shall make a determination of application completeness within five business days of the application filing.
- D. If the application is determined to be complete, the application shall then be processed according to the procedures and timelines set forth in this code.
- E. If an application is determined to be incomplete, the ZEO shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected and the ZEO determines that the application is complete.
- F. The City shall not be required to process an incomplete application, forward an incomplete application to any decision-making body, or be subject to any required timelines of review for incomplete applications.
- G. If the applicant fails to correct all deficiencies and submit a complete application within 60 days of the notice provided by the ZEO, the incomplete application shall not be reviewed, the applicant's original filing fee shall be forfeited, and the incomplete application shall be deemed withdrawn. The ZEO may grant one 60-day extension if just cause is shown, upon written request by the applicant.
- H. No reconsideration of an incomplete application shall occur after expiration of the 60-day period, and an applicant in need of further development approval under the code shall, pursuant to all of the original requirements this chapter, submit a new application, and submit a new filing fee.
- I. If any false or misleading information is submitted or supplied by an applicant on an application, that application shall be deemed incomplete.

**(e) Simultaneous Processing of Applications**

- (1) Whenever two or more forms of review and approval are required by review boards under this code, the ZEO shall determine the order and timing of review.



- (2) The ZEO may authorize a simultaneous review of applications, so long as all applicable requirements are satisfied for all applications.

**(f) Pre-application Conferences or Meetings**

- (1) Prior to filing an application, an applicant may request a meeting with the ZEO for a pre-application conference to discuss the proposed application or project.
- (2) An applicant may request a pre-application meeting with a review board for any review procedure in this chapter. The applicant may request such meeting by submitting a written request to the ZEO for placement on the agenda of the next regularly scheduled meeting or any special meeting that may be called by the applicable review board.
- (3) The purpose of the pre-application conference or meeting shall be to discuss the proposed application or project, review submittal requirements, and discuss compliance with the provisions of this code and any applicable plans prior to the submission of an application.
- (4) No action can be taken by the administrative staff and/or any review boards until the applicant submits an actual application and/or plan to the City pursuant to the laws and policies of the City. Therefore, all discussions that occur between the applicant and/or applicant's representative(s) and staff, and/or City review boards, that occur prior to the date the applicant submits an actual application and/or plan including, but not limited to, any informal meetings with City staff, review boards, any pre-application conferences or meetings, are not binding on the City and do not constitute official assurances or representations by the City or its officials regarding any aspects of the plan or application discussed.

**(g) Fees**

- (1) Any application for a review procedure under this code shall be accompanied by such fee as shall be specified from time to time by ordinance of City Council. There shall be no fee, however, in the case of applications filed by the Mayor, City Council, or any of the review boards.
- (2) The fees shall be in addition to any other fees that may be imposed by the City, Knox County, State, or other agency having jurisdiction.
- (3) Such fees are adopted to cover the cost to the City for investigations, legal advertising, postage, and other expenses resulting from the administration of planning, subdivision, and zoning activities.
- (4) Unless otherwise identified in the fee schedule adopted by City Council, no application shall be processed or determined to be complete until the established fee has been paid.
- (5) If the City determines that the costs on a particular application will exceed the filing fee as established by City Council as a result of preparation of legal descriptions, maps, studies, or other required information, or as a result of the need for professional expert review, study, or testimony, the ZEO is authorized to collect such additional costs from the applicant.
- (6) Application fees are not refundable except where otherwise stated in this code or where the ZEO determines that an application was accepted in error, or the fee paid exceeds the amount due, in which case the amount of the overpayment will be refunded to the applicant.

**(h) General Provisions for Attendance and Decisions**

- (1) Whenever a provision of this code allows for or requires attendance at a meeting or hearing by the applicant, the applicant may attend in person, may have an authorized representative attend in their place, or may provide the ZEO written comments in advance of the meeting or hearing.
- (2) Whenever a provision in this code requires a decision to be provided in writing, or communication in writing, then such provision shall be interpreted to allow for such communication by e-mail unless otherwise stated, required by law, or requested by the applicant.

**(i) Public Notification for Public Meetings**

For all public meetings required by this code, the City shall comply with this code and all applicable State notice requirements.

**(j) Public Notification for Public Hearings**

- (1) Applications for development approval that require public hearings, including all adjudication hearings, shall comply with all applicable State requirements and the public meeting notice requirements established in Section [1103.02\(i\)](#), above.
- (2) The ZEO shall be responsible for providing the required notice as specified in [Table 1103-2](#).



(3) **Content**

Notices for public hearings, whether by publication or mail (written notice), shall, at a minimum:

- A. Provide the name of the applicant or the applicant’s agent;
- B. Indicate the date, time, and place of the public hearing;
- C. Describe the land involved by street address, Knox County parcel identification number (as applicable), or by legal description; and
- D. Describe the nature, scope, and purpose of the application or proposal.

(4) **Notice Requirements**

Published and mailed notice for public hearings shall be provided as defined in [Table 1103-2](#).

| TABLE 1103-2: NOTICE REQUIREMENTS                                                             |                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Review Procedure                                                                              | Published Notice                                                                                                                                         | Written (Mailed) Notice                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Code Text Amendment                                                                           |                                                                                                                                                          | No written notice is required for a text amendment.                                                                                                                                                                                                                                                                                                                                                                                                     |
| Zoning Map Amendment                                                                          | Published notice required a minimum of 7 days before the scheduled public hearing of MPC and 30 days before the scheduled public hearing of City Council | Written notice shall be sent to all applicant and all owners of property within, contiguous, and across the street from the boundary of all properties subject to the application. The notice shall be required a minimum of 7 days before the scheduled public hearing of MPC and 20 days before the scheduled public hearing of City Council<br><br>Written notice shall not be required where the application involves more than 10 individual lots. |
| Planned Development Notification                                                              | To be added <sup>21</sup>                                                                                                                                | To be added                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Conditional Use Permit, Variances, Appeals, and Alternative Equivalency Reviews <sup>22</sup> | Published notice required a minimum of 10 days before the scheduled public hearing of BZA or MPC, as applicable.                                         | Written notice to the applicant and “all parties of interest” that includes, but is not limited to, the applicant (or person making an appeal), and all adjacent property owners. The notice shall be required a minimum of 10 days prior to the scheduled public hearing of BZA or MPC, as applicable.                                                                                                                                                 |

(5) **Published Notice**

- A. Published notice shall be provided in a newspaper of general circulation. The City may also provide additional published notice by posting of the notice in City buildings or by electronic media including, but not limited to, posting online at the City’s website.
- B. The content and form of the published notice shall be consistent with the requirements of this section and State law.

(6) **Written Notice**

- A. Written notice shall be provided by first class mail, unless otherwise stated.
- B. Written notification of property owners shall apply only to the initial presentation of the application for the public hearing in front of the applicable review board.
- C. Written notice shall be postmarked no later than the amount of days specified in [Table 1103-2](#) prior to the hearing date at which the item will be considered.
- D. Where written notice is required, it shall be mailed to the address of such owners appearing on the County Auditor's current list or the County Treasurer's mailing list.

<sup>21</sup> This will be added upon further discussion of the draft PD District.  
<sup>22</sup> DISCUSSION – We will be discussing which board should review the alternative equivalency review later in this chapter.

**(7) Constructive Notice**

- A. Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice shall be limited to errors in a legal description, typographical or grammatical errors, or errors of actual acreage that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct the department having responsibility for notification to make a formal finding as to whether there was substantial compliance with the notice requirements of this code, and such finding shall be made available to the decision-making body prior to final action on the request.
- B. When the records of the City document the publication, mailing, and/or posting of notices as required by this chapter, it shall be presumed that notice of a public hearing was given as required by this section.

**(k) Conduct of Public Hearing****(1) Rights of All Persons at Public Hearings**

Any person may appear at a public hearing and submit information or evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state their address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.

**(2) Continuance of a Public Hearing or Deferral of Application Review**

- A. An applicant may request that a review board's consideration of an application at a public hearing be deferred by submitting a written or verbal request for deferral to the ZEO prior to the publication of notice, as may be required by this code. The ZEO may grant such requests, in which case, the application will be considered at the next regularly scheduled meeting.
- B. A request for deferral of consideration of an application received by the ZEO after publication of notice of a public hearing, as required by this code, shall be considered as a request for a continuance of the public hearing, and may only be granted by the applicable review board.
- C. The review board conducting the public hearing may, on its own motion or at the request of the applicant, continue the public hearing to a fixed date, time, and place, provided the date, time, and place is publicly announced at the time of continuance. No additional written or published notice shall be required.

**(l) Withdrawal of Application**

- (1) Any request for withdrawal of an application shall be either submitted in writing to the ZEO or made through a written request by the applicant prior to action by the City Council or applicable review board.
- (2) After request for withdrawal has been received, the ZEO will then withdrawal the application from any agenda and no further action will be taken. Any future request for action will require a new application and fee in accordance with this code.

**(m) Examination and Copying of Application and Other Documents**

Documents and/or records related to applications may be inspected and/or copied as provided for by State law.

**(n) Effect of any Approvals**

- (1) The issuance of any approval or permit under this code shall authorize only the particular development, alteration, construction, or use approved in the subject application.
- (2) All approvals shall run with the land or use and shall not be affected by change in ownership provided there is no change in use and all conditions of approval continue to be met.



**(o) Modifications or Amendments of Approved Applications**

- (1) For any review procedure, the ZEO is authorized to allow minor changes related to design of an approved application where the change is insignificant and has minimal impact to the overall design of the development or subdivision, does not increase density, or is necessary to address minor technical issues. This shall not give the ZEO the authority to vary the requirements of this code or any conditions of approval.<sup>23</sup>
- (2) Where the ZEO determines that the proposed modification, amendment, or change is not minor, as stated above, the applicant shall be required to resubmit an application and payment of additional fees for the application to be reviewed in accordance with the procedures and standards established for its original approval.

**(p) Reapplication after Denial of an Application<sup>24</sup>**

If an application is denied, the applicant may:

- (1) Appeal the decision in accordance with the applicable appeals procedure established for the procedure in this code, or as granted by State Law; or
- (2) Make changes to the application that will fully address all issues and findings identified for the denial and resubmit a new application, including any required fees. Any such resubmission shall contain evidence that shows how the new application has substantially changed to address each of the findings of the original decision. The ZEO shall have the authority to determine if the evidence submitted substantially changes the application to address all issues as part of the complete application determination in [1103.02\(d\)\(4\)](#). If it does not, the ZEO shall return the application, with reasons for their determination in writing, along with any submitted fees;
- (3) Submit the same application after a 12-month waiting period; or
- (4) Submit a new application if the proposed use and design of the site will be entirely different than the denied application.

**(q) Subsequent Development**

- (1) Development authorized by any approval under this section and this code shall not be carried out until the applicant has secured all other approvals required by this code or any other applicable provisions of the City's Codified Ordinances.
- (2) The granting of any approval or permit shall not guarantee the approval of any other required permit or application.
- (3) The City shall not be responsible for reviewing the application for compliance with any permits, certificates, or other approvals that may be required by Knox County, the State, or other agencies having jurisdiction.

**(r) Records**

The City shall maintain permanent and current records of all applications and the decisions related to those applications in City Hall.

**(s) Computation of Time**

- (1) In computing any period of time prescribed or allowed by this code, the date of the application, act, decision, or event, from which the designated period of time begins shall not be included. The last date of the period of time to be computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday observed by the City of Mount Vernon where the City administrative offices are closed for the entire day, in which case the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.
- (2) When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation (i.e., business days and not calendar days).

<sup>23</sup> This is a new provision that would allow for very minor, technical adjustments after approval.

<sup>24</sup> This is an expanded clarification of the city's current re-submission provisions, which states that there is one-year time frame unless the application is revised.

- (3) When the City offices are closed to the public for the entire day which constitutes the last day of the period of time, then such application, act, decision, or event may be performed on the next succeeding day which is not a Saturday, a Sunday, or a legal holiday observed by the City of Mount Vernon in which the City administrative offices are closed for the entire day.
- (4) If a timeframe does not specify business or calendar days, such timeframe shall be interpreted to be calendar days.

### **1103.03 CODE TEXT AND MAP AMENDMENTS (REVISED CHAPTER 1156)**

**(a) Purpose**

The purpose of the code text and zoning map amendment procedure is to provide a process for amending the zoning map and/or text of this code.

**(b) Applicability**

This section shall apply to requests to amend the text of this code or amend the Zoning District Map of the City of Mount Vernon, Ohio.

**(c) Initiation**

- (1) For a zoning map amendment of a specific property, any person who has authority to file an application (See Section [4.0](#).) for such property may initiate an amendment by filing an application with the ZEO. Where the application involves multiple properties, at least one person having authority to file an application for each property shall be required to sign the application.<sup>25</sup>
- (2) Only City Council or the MPC may initiate code text amendments, however, any member of the public may request that the MPC or City Council consider a text amendment during their respective public meetings.
- (3) City Council may initiate a code text or map amendment by adopting a resolution that refers the amendment to the MPC.
- (4) The MPC may initiate a code text or map amendment by adopting a motion to make such amendment.

**(d) Code Text or Map Amendment Review Procedure**

The review procedure for a code text or map amendment shall be as follows:

**(1) Step 1 – Pre-Application Meeting (Optional)**

An applicant may request to have a pre-application meeting with the ZEO and/or MPC to informally discuss the application and any concept plans. Such meeting shall be subject to Section [1103.02\(f\)](#).

**(2) Step 2 – Application**

- A. For amendments that are not initiated by the MPC or City Council, the applicant shall submit an application in accordance with Section [1103.02: Common Review Requirements](#), and with the provisions of this section.
- B. Amendments initiated by City Council shall be referred to the MPC for initiation of review.
- C. Once the application is determined to be complete, the ZEO shall fix a date for a public hearing before the MPC (Step 4).

**(3) Step 3 – Administrative Staff Review**

- A. Upon determination that a text or zoning map amendment application is complete, the ZEO shall forward the application to the MPC and may distribute the application to other departments or agencies for review and comment.
- B. The ZEO may<sup>30</sup> consolidate any comments from the public received in advance of the hearing and comments from the any City departments or other agencies into a report for the MPC to review as part of Step 4.

<sup>25</sup> The current language states one owner or lessee of property “within the area proposed to be change” is required but that could be interpreted to allow for one person to initiate a rezoning of someone else’s property so we have clarified that all property owners have to agree to the rezoning.

<sup>30</sup> Note that this provision uses the permissive “may” so that it is not an absolute that there will be a staff level report.



**(4) Step 4 – MPC Review and Recommendation**

- A. The MPC shall review the amendment application at a public hearing at the next regularly scheduled MPC meeting or at a special meeting.
- B. Notification of the public hearing shall be provided in accordance with Section [1103.02\(j\)](#).
- C. In addition to the general notification above, the ZEO shall give notice by registered or certified mail to the State Director of Transportation of the initiation of any proposed amendment that:
  - i. Affects any land within 300 feet of a proposed new highway; or
  - ii. Affects any land within 300 feet of any proposed changes to a highway as described in certification to local officials by the State Director of Transportation; or
  - iii. Affects any land within 500 feet from a proposed intersection of such a new highway and any existing public road or highway.
  - iv. If the Director of Transportation's response is negative, the MPC will stay their proceedings until the reason for the negative response is resolved.
- D. In reviewing the application, MPC shall, at a minimum, consider the review criteria of this section.
- E. The MPC shall make a recommendation to City Council regarding the application. In making its recommendation, the MPC may recommend approval, approval with some modification, or denial of the application.
- F. If the MPC fails to make a recommendation within 30 days following the close of the public hearing, or an extended timeframe approved by the applicant, the application will move forward to Step 5 without a specific recommendation.<sup>31</sup>

**(5) Step 5 – City Council Review and Decision**

- A. Following receipt of the recommendation from the MPC (Step 4), the application shall be placed on City Council's agenda for the next regularly scheduled meeting, if in compliance with notification requirements, or City Council shall set a time for a public hearing on the proposed amendment that is no more than 60 days<sup>32</sup> from receipt of the MPC's recommendation, or an extended timeframe approved by the applicant.
- B. Notification of the public hearing shall be provided in accordance with Section [1103.02\(j\)](#).
- C. City Council shall review a text or zoning map amendment application during the public hearing. In reviewing the application, City Council shall, at a minimum, consider the recommendation from MPC, if made, and the review criteria of this section.
- D. Within 90 days of the close of the public hearing, City Council shall adopt, adopt with some modification, or deny the recommendation of the MPC.
  - i. If City Council moves to adopt the recommendation of MPC, such action shall only require concurring vote of four members of City Council.
  - ii. If City Council moves to adopt the recommendation of MPC with some modification, or deny the recommendation, such action shall require a favorable vote of six members of City Council.
- E. No such ordinance shall be passed unless it has been fully and distinctly read on three different days except that such ordinance may become emergency legislation if six members of City Council vote to dispense with this rule.

**(e) Review Criteria<sup>33</sup>**

The review of code text or map amendment applications by MPC and City Council shall be based on consideration of the following review criteria. Not all criteria may be applicable in each case, and each case shall be determined on its own facts.

<sup>31</sup> The current ordinance gives the Planning Commission 15 days to make a recommendation, I have suggested increasing that to 30 days to allow for a decision during the next regularly scheduled meeting. Also, it appears that City Council can hear the amendment even if the PC does not act so I have tried to clarify this.

<sup>32</sup> This deadline is not in the current ordinance but many communities establish a base deadline just to provide some level of predictability.

<sup>33</sup> This language expands on some of the criteria established in the existing Chapter 1156.



- (1) The proposed amendment is compatible with the use of adjacent land, adjacent zoning, and with land use plans for the general area;
- (2) The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- (3) The proposed amendment will promote the public health, safety, convenience, comfort, prosperity and general welfare;
- (4) The proposed amendment, if amending the zoning map, is consistent with the stated purposes of the proposed zoning district;
- (5) The proposed amendment, if amending the zoning map, follows lot lines or the centerlines of streets, railroads, or other rights-of-way, to the maximum extent feasible.
- (6) The proposed amendment is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated;
- (7) The proposed amendment will not constitute a significant impact on public facilities, general expansion plans of the City, and the City's schedule for improvement of capital facilities;
- (8) The proposed amendment will not constitute spot zoning where special treatment is given to a particular property or property owner that would not be applicable to a similar property, under the same circumstances; and/or
- (9) The proposed amendment is not likely to result in significant adverse impacts upon other property in the vicinity of the subject tract including, but not limited to, traffic flow and pedestrian safety.

**(f) Effective Date And Referendum**

- (1) Any text or zoning map amendment adopted by City Council shall become effective 30 days after the date of such adoption unless within 30 days after the passage of the ordinance there is presented to the City Clerk a petition, signed by a number of qualified voters residing in the city equal to not less than 10 percent of the total vote cast in such area at the last preceding general election at which a Governor was elected, requesting the City Council to submit the zoning amendment to the electors of the City for approval or rejection at the next general election.
- (2) No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment has been approved by the voters, it shall take effect immediately.

#### **1103.04 ALTERNATIVE EQUIVALENCY REVIEW (NEW)<sup>40</sup>**

**(a) Purpose**

The alternative equivalency review is a procedure that allows applicants to propose a unique design option as an alternative to a development standard established in this code, provided it meets or exceeds the intent of the design-related provisions of this code. It is not a variance, waiver, or weakening of regulations. Rather, this procedure permits a site-specific plan that is equal to or better than the strict application of a design standard specified in this code. An alternative equivalency review approval shall apply only to the specific site for which it is requested and does not establish a precedent for assured approval of other requests.

**(b) Applicability**

The alternative equivalency review procedure shall be available only for the following sections of this code:<sup>41</sup>

- (1) Section [<>: Outdoor Lighting](#);
- (2) [Chapter <>: Architectural Standards](#)
- (3) [Chapter <>: Landscaping](#)
- (4) [Chapter <>: Parking](#)
- (5) Any design standards or guidelines that apply to a historic district.

<sup>40</sup> This is the new procedure that was proposed as part of the code audit.

<sup>41</sup> This list of sections may change after we review all the different standards that will be a part of this code as well as a final determination on where any historic standards and guidelines might be incorporated.



**(c) Review Timing and Review Board**

- (1) An alternative equivalency review that is not related to a COA application shall be reviewed by the MPC in accordance with the procedure below..
- (2) An alternative equivalency review that is related to a COA application shall be made concurrently with a COA application, if applicable, with notice for the public hearing as set forth in this section.

**(d) Alternative Equivalency Review Procedure**

The review procedure for any alternative equivalency review application shall be as follows:

**(1) Step 1 – Application**

The applicant shall submit an application in accordance with Section [1103.02: Common Review Requirements](#), and with the provisions of this section.

**(2) Step 2 – Administrative Staff Review and Transmission to the MPC or HRC**

- A. Upon determination that an alternative equivalency review application is complete, the ZEO shall forward the application to the MPC or HRC, as applicable, and may distribute the application to other departments or agencies for review and comment.
- B. The ZEO may consolidate any comments from the public received in advance of the meeting and comments from any City departments or other agencies into a report for the MPC or HRC, as applicable to review as part of Step 4.

**(3) Step 3 – MPC or HRC Review and Decision**

- A. Within 30 days after the application is determined to be complete, or an extended timeframe approved by the applicant, the MPC or HRC, as applicable, shall review the application at a public hearing.
- B. Notification of the public hearing shall be provided in accordance with Section [1103.02\(i\)](#).
- C. In reviewing the application, the MPC or HRC, as applicable shall, at a minimum, consider the reports and opinions transmitted by the ZEO and the review criteria of this section.
- D. The MPC or HRC, as applicable, shall make a decision on the application. In making its decision, the MPC or HRC, as applicable, may approve, approve with modifications or supplementary conditions, or deny the application.
- E. If the MPC or HRC, as applicable, fails to act within 30 days after close of the public hearing, or an extended period as may be agreed upon by the applicable board, and applicant, then the application shall be considered denied.
- F. If approved, any zoning permit, COA, or other related applications shall demonstrate compliance with the alternative equivalency review approval.

**(e) Review Criteria**

Decisions on an alternative equivalency review application shall be based on consideration of the following criteria:

- (1) That the proposed alternative achieves the intent of the subject design or development standard to the same or better degree than the subject standard;
- (2) That the proposed alternative achieves the goals and policies of any adopted plans to the same or better degree than the subject standard;
- (3) That the proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard; and
- (4) That the proposed alternative imposes no greater impacts on adjacent properties than would occur through compliance with the specific requirements of this code.

**(f) Conditions**

The MPC or HRC, as applicable, may impose conditions on an approval for an alternative equivalency review, provided such conditions are related to ensuring the performance of the alternative equivalency review to meet or exceed the subject standard. Such conditions may include required timeframes, amendments or revisions to the proposal, or the ability to revoke an approval for an alternative equivalency review.

**(g) Decisions**

Any decision on an alternative equivalency review application shall not be binding on the City related to future applications requesting an alternative to any of the applicable standards. Each case shall be reviewed and decided upon based on the individual circumstances.

**(h) Time Limit**

- (1) An approval of an alternative equivalency review application shall expire if the zoning permit or COA approval, as applicable, expires.
- (2) Upon expiration of an alternative equivalency review approval, a new application, including all applicable fees, shall be required before a new application will be reviewed.

**(i) Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the MPC shall have the right to appeal the decision to the court of common pleas of the applicable county, as provided in ORC Chapters 2505 and 2506.

## **1103.05 CERTIFICATE OF APPROPRIATENESS (COA) (REVISED 1172.03)**

**(a) Purpose**

The purpose of the COA is to provide a procedure by which to review construction, renovation, expansion, and demolition projects within a locally or nationally designated historic district or for locally or nationally designated historic properties. In an effort to preserve the character of these properties and districts, the City has established reasonable development standards and design guidelines for buildings and structures, and this procedure allows for a comprehensive review of the activities against the adopted standards and guidelines.

**(b) Applicability**

- (1) No person shall make any exterior construction, reconstruction, alteration, or demolition of a structure on any property within a Historic Overlay District unless a COA has been approved by the HRC and a zoning permit and building permit, if required, has also been issued.
- (2) Site improvements, such as the establishment of a parking lot, landscaping, or other site work, or any changes to components of a property not specifically identified by the code that applies to the subject property, shall not require a COA.
- (3) Projects and activities that are exempt from the COA review procedure include:<sup>44</sup>
  - A. The reconstruction, alteration or demolition of a structure or feature which has been ordered by the Building Official upon certification of an unsafe condition constituting an emergency;
  - B. Painting or general maintenance of a structure that does not alter exterior architectural features;
  - C. Changes in occupancy not involving structural or exterior work; and
  - D. Any interior renovations which will not alter and/or affect the exterior elevations or facade of the building or structure or any architectural features that are visible from the outside.

**(c) COA Review Procedure**

The review procedure for a COA shall be as follows:

**(1) Step 1 – Pre-Application Meeting (Optional)**

An applicant may request to have a pre-application meeting with the ZEO or the HRC to informally discuss the application and any concept plans. Such meeting shall be subject to Section [1103.02\(f\)](#).

**(2) Step 2 - Application**

- A. The applicant shall submit an application in accordance with Section [1103.02: Common Review Requirements](#), and with the provisions of this section.
- B. In making application, the ZEO or the HRC may request that the applicant provide exhibits, sketches, examples of materials, renderings, or other documentation to assist in their decision.

<sup>44</sup> These are new provisions common to historic preservation reviews.



**(3) Step 3 - Administrative Staff Review**

Upon determination that a COA application is complete, the ZEO shall refer the application to the MPC.

- A. Upon determination that an HRC application is complete, the ZEO shall forward the application to the HRC and may distribute the application to other departments or agencies for review and comment.
- B. The ZEO may consolidate any comments from the public received in advance of the meeting and comments from any City departments or other agencies into a report for the HRC to review as part of Step 4.

**(4) Step 4 – Historical Review Commission Review and Decision**

- A. The HRC shall review the COA application at its next regularly scheduled meeting, or at a special meeting, after the application is determined to be complete.
- B. The HRC shall, at a minimum, consider the review criteria of this section.
- C. Notification of the public meeting shall be provided in accordance with Section [1103.02\(i\)](#).
- D. Within 30 days after the COA application is determined to be complete, or an extended timeframe approved by the applicant, the MPC shall hold a public meeting to review the application and make a decision on the application. In making its decision, the MPC may approve, approve with modifications, or deny the application. The MPC shall make every effort to work with the applicant within this time period to develop a proposal that the MPC can approve or approve with modifications.
- E. The time period shall be extended to 60 days from a public hearing, if the HRC is required to hold a hearing to undertake an alternative equivalency review (See Section [4.0](#).)
- F. If a COA is denied, the City shall not issue any permits that would allow modifications for which the COA was denied. In cases where the HRC has denied a COA, the HRC shall state the reasons for such disapproval in writing and transmit the written statement to the applicant together with any recommendation the HRC may have made for appropriate changes.
- G. If the HRC fails to make a recommendation within the established timeframe, or an extended timeframe approved by the applicant, the application shall be deemed denied.
- H. If a zoning permit is required for the subject work, the applicant may proceed with applying for the zoning permit following approval of the COA. Such zoning permit applications shall comply with the COA approval and any related modifications.

**(d) Determining the Significance of a Structure (New)<sup>46</sup>**

- (1) When making decisions or recommendations about changes to structures in the applicable Historic Overlay Districts, the HRC shall have the authority to make a determination of the historical or architectural significance of the structure based on this section.
- (2) For structures that the HRC finds are not historically or architecturally significant, the HRC may relax or waive the standards or guidelines that apply to the project.
- (3) If the HRC finds that the structure is historically or architecturally significant, the standards and guidelines of this code shall be fully applied as determined by the HRC.
- (4) The HRC shall determine whether a structure or site is significant based on the structure's:
  - A. Value as a reminder of the cultural, historical, or archaeological heritage of the City, State, or nation;
  - B. Location as a site of a significant local, State, or national event;
  - C. Identification with a person or persons who significantly contributed to the development of the City, State, or nation;
  - D. Identification as the work of a master builder, designer, or architect whose individual work has influenced the City, State, or nation;

<sup>46</sup> This is a new section that the City might want to consider that allows the HRC to first consider how significant the structure is before making a decision. If they find that it is not a significant structure, they can be more lenient in their findings versus if it is a significant structure. For example, if someone is requesting to demolish an accessory building that has no architectural significance and is not visible, the HRC can approve the demolition quickly.

- E. Value as a building that is recognized for the quality of its architecture and that it retains sufficient elements showing such architectural significance;
- F. Example of an architectural style or period; and/or
- G. Character as a contributing element in a locally or nationally designated historic district.

**(e) Review Criteria**

Decisions on a COA application shall be based on consideration of the following criteria:

- (1) The proposed development is in compliance with all the requirements of this code and other related codes and ordinances enforced by the City;
- (2) The proposed development incorporates any applicable standards or guidelines (See Section [1110.03](#)), to the maximum extent feasible;
- (3) The proposed development meets all the requirements or conditions of any applicable development approvals (e.g., conditional use permit approvals, variance approvals, etc.); and
- (4) There is no feasible and prudent alternative alteration or change which would conform to the guidelines, and adhering to the guidelines would deny the owner a reasonable rate of return on the real property or amount to a taking of property without just compensation.

**(f) Time Limit**

- (1) The applicant shall submit a completed application for a zoning permit within one year of the date that the COA was approved or the approval shall expire. The date of approval shall be the date the ZEO issues the COA.
- (2) Upon expiration of a COA, a new application, including all applicable fees, shall be required before a new application will be reviewed.
- (3) Upon written request, one extension of six months may be granted by the ZEO if the applicant can show good cause for a delay.
- (4) The HRC may authorize alternative time limits for zoning permit issuance based on the scale of the proposed development.

**(g) Appeals**

If the applicant and HRC do not come to any conclusion on an alternative plan, then any person or entity claiming to be injured or aggrieved by any final action of the HRC shall have the right to appeal the decision to the BZA as established in Section <>.

## **1103.06 CONDITIONAL USE PERMIT**

**(a) Purpose**

The purpose of a conditional use permit procedure is to allow consideration for certain uses that, due to their unique and special nature relative to location, design, size, operations, circulation, and general impact on the community, need to be evaluated on a case-by-case basis.

**(b) Conditional Use Permit Review Procedure**

The review procedure for a conditional use shall be as follows:

**(1) Step 1 – Application**

The applicant shall submit an application in accordance with Section [1103.02: Common Review Requirements](#), and with the provisions of this section.

**(2) Step 2 – Administrative Staff Review**

- A. Upon determination that a conditional use permit application is complete, the ZEO shall forward the application to the MPC and may distribute the application to other departments or agencies for review and comment.
- B. The ZEO may consolidate any comments from the public received in advance of the hearing and comments from any City departments or other agencies into a report for the MPC to review as part of Step 3.



(3) **Step 3 – MPC Review and Decision**

- A. The MPC shall hold a public hearing within 30 days of the determination that the conditional use permit application is complete, provided adequate notification is provided pursuant to Section [1103.02\(j\)](#).
- B. In reviewing the application, the MPC shall, at a minimum, consider the review criteria of this section.
- C. The MPC may request that the applicant supply additional information that the MPC deems necessary to review and evaluate the application.
- D. Within 30 days of the close of the public hearing, or an extended timeframe approved by the applicant, the MPC shall render a decision. In making its decision, the MPC may approve, approve with modifications or supplementary conditions, or deny the application.
- E. The ZEO shall notify the applicant of the decision of the BZA.
- F. If the MPC fails to make a recommendation within the established timeframe, or an extended timeframe approved by the applicant, the application shall be deemed denied.
- G. The decision of the MPC shall become effective immediately.
- H. In approving a conditional use permit, the MPC may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to ensure compliance with the standards of this section and the purposes of this code. Any conditions established by the MPC shall relate directly to the requested variance or conditional use permit, as applicable.
- I. Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of [Chapter <>](#).

(c) **Review Criteria**

Decisions on a conditional use permit application shall be based on consideration of the following review criteria. All conditional use permit applications shall be subject to review under the criteria of this section, as applicable, and may also be subject to additional use-specific standards, as established in this code.

- (1) The proposed conditional use is established as an allowed conditional use in the applicable zoning district;
- (2) The proposed use is consistent with the spirit, purposes and intent of adopted plans, the general purposes of this code, and the purposes of the zoning district in which the conditional use will be located;
- (3) The proposed use complies with any use-specific standards as may be established for the use as may be established in this code;
- (4) The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, comfort, prosperity or general welfare;
- (5) The proposed use will comply with all applicable development standards unless an alternative equivalency review or variance is approved in accordance with this code;
- (6) The proposed use will be harmonious with the existing or intended character of the general vicinity, and such use will not change the essential character of the same area;
- (7) The conditional use will not be hazardous or disturbing to the existing and future use and enjoyment of property in the immediate vicinity for the uses permitted, nor substantially diminish or impair property values within the neighborhood;
- (8) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any person, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
- (9) Adequate public facilities and services such as highways, street, police and fire protection drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use will be or are being provided;
- (10) Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion on the surrounding public streets, and adequate consideration has been given to the proximity of access drives to street intersections relative to the anticipated volume of traffic;



- (11) The design of the buildings, structures, and site will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance;
- (12) The use will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance;
- (13) There is minimal potential for future hardship on the conditional use that could result from the proposed use being surrounded by uses permitted by right that may be incompatible; and
- (14) Wherever there are no use-specific standards for the proposed use related to street frontage, height, setbacks, or other lot and site regulations, then such use shall be subject to the lot and site regulations for the applicable zoning district.

**(d) Time Limit**

- (1) A conditional use permit approval shall be deemed to authorize only one particular conditional use and said permit shall automatically expire if, for any reason, the conditional use shall cease for more than six months.<sup>48</sup>
- (2) The applicant shall submit a completed application for a zoning permit and start work within one year of the date a conditional use permit was approved or the approval shall expire.
- (3) Upon expiration of a conditional use permit, a new application, including all applicable fees, shall be required before a conditional use permit application will be reviewed.
- (4) Upon written request, one extension of six months may be granted by the ZEO if the applicant can show good cause for a delay.
- (5) As part of the conditional use permit approval, the MPOC may authorize alternative time limits for zoning permit issuance based on the scale of the proposed development.

**(e) Revocation of a Conditional Use Permit Approval**

The breach of any condition, safeguard, or requirement shall automatically invalidate the conditional use permit approval, and shall constitute a violation of this code. Such violation shall be punishable as specified in Section <>.

**(f) Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the MPC shall have the right to appeal the decision to the court of common pleas of the applicable county, as provided in ORC Chapters 2505 and 2506.

## **1103.07 VARIANCES AND APPEALS<sup>49</sup>**

**(a) Purpose**

The purpose of this section is to define the procedures that are reviewed by the BZA and provide appropriate review criteria for each procedure. The specific purpose statements for each procedure are as follows:

**(1) Purpose of the Variance Procedure**

The purpose of a variance is to provide limited relief from the requirements of this code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose on property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.

**(2) Purpose of the Appeals Procedure**

The appeals process is the procedure to follow when a person claims to have been aggrieved or affected by an administrative decision made in the administration or enforcement of this code.

<sup>48</sup> This is new to the City.

<sup>49</sup> This is a consolidation of several sections in the current Chapter 1555.



**(b) Appeals Applicability, Initiation, and Forwarding of the Record**

- (1) An appeal may be made regarding any administrative decision made in the administration and enforcement of this code including, but not limited to, administrative decisions by the ZEO.
- (2) Appeals shall be initiated by the person aggrieved or affected by any order, decision, determination, or interpretation made by the authority having jurisdiction who is charged with the administration or enforcement of this code.
- (3) An appeal may not be made to the BZA when the MPC is making a recommendation to City Council as part of a legislative action such as a code text or map amendment.
- (4) Within 20 days of an administrative order, decision, determination, or interpretation, the person appealing the decision or their authorized agent shall submit all required information to the ZEO in accordance Section [1103.02: Common Review Requirements](#).
- (5) Upon receiving the written appeal of an administrative order, decision, determination or interpretation, the ZEO shall transmit the written appeal with all papers, documents, and other materials related to the appealed order, decision, determination or interpretation to the BZA. This material shall constitute the record of the appeal.

**(c) Review Procedure**

The review procedure for all conditional use permits, variances, and appeals shall be as follows:

**(1) Step 1 – Application**

- A. Any application or submission for an appeal shall be undertaken in accordance with Section <>, above.
- B. For variance applications, the applicant shall submit an application in accordance with Section [1103.02: Common Review Requirements](#), and with the provisions of this section.

**(2) Step 2 – Administrative Staff Review**

- A. For appeals, there shall be no internal staff review required outside of forwarding the record to the BZA in accordance with Section <>, above.
- B. Upon determination that a variance application is complete, the ZEO shall forward the application to the BZA and may distribute the application to other departments or agencies for review and comment.
- C. The ZEO may consolidate any comments from the public received in advance of the hearing and comments from any City departments or other agencies into a report for the BZA to review as part of Step 3.

**(3) Step 3 – BZA Review and Decision**

- A. The BZA shall hold a public hearing within 30 days of the filing of an appeal or the date the ZEO determines the variance application is complete, provided adequate notification is provided pursuant to Section [1103.02\(i\)](#).
- B. In reviewing the application, the BZA shall, at a minimum, consider the review criteria of this section.
- C. The BZA may request that the applicant supply additional information that the BZA deems necessary to review and evaluate the appeal or applications.
- D. Within 30 days of the close of the public hearing, or an extended timeframe approved by the applicant, the BZA shall render a decision. In making its decision, the BZA may approve, approve with modifications or supplementary conditions, or deny the application.
- E. In making its decision, the BZA shall make specific findings of fact, based directly on the particular evidence presented. The findings of fact shall state that the reasons set forth in the application and as presented by the applicant during the public hearing justify either:
  - i. Approval of the application;
  - ii. Approval with modifications or supplementary conditions; or
  - iii. Denial of the variance application.
  - iv. In approving any variance, the BZA must find that such approval will make possible a reasonable use of the land, building, or structure.
- F. The ZEO shall notify the applicant, in writing, of the decision of the BZA.



- G. If the BZA fails to make a recommendation within the established timeframe, or an extended timeframe approved by the applicant, the application shall be deemed denied.
- H. The decision of the BZA shall become effective immediately.
- I. In approving a variance, the BZA may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to ensure compliance with the standards of this section and the purposes of this code. Any conditions established by the BZA shall relate directly to the requested variance.
- J. Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of [Chapter <>](#).

(d) **Variance Review Criteria**<sup>50</sup>

Variances shall not be granted on the grounds of convenience, financial hardship or profit, but only where strict application of the provisions of this Zoning Ordinance would result in a practical difficulty or unnecessary hardship as defined in more depth below.

(1) **Area or Dimensional Variance**

Where an applicant is seeking an area or dimensional variance, the following factors shall be considered and weighed by the BZA to determine if a practical difficulty exists that would justify approval of the variance. However, no single factor listed below may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts. The application for a variance shall not be based exclusively upon a desire to increase the value or income potential of the parcel of land or any structures or uses thereupon. The BZA shall take into consideration:

- A. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. Examples of such special conditions or circumstances are exceptional irregularity, narrowness, shallowness or steepness of the lot, or proximity to nonconforming and inharmonious uses, structures or conditions;
- B. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- C. Whether the variance is the minimum necessary to make possible the reasonable use of the land or structures;
- D. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
- E. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, or trash pickup;
- F. Whether special conditions or circumstances exist as a result of actions of the applicant (actions of the applicant shall not include the purchase or acquisition of the property);
- G. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
- H. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance;
- I. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district; and
- J. Whether a literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code.

(2) **Use Variance**

In order to grant a use variance, the BZA shall determine that strict compliance with the terms of this code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

<sup>50</sup> This is a greatly expanded set of standards for both area/dimensional variances and use variances that builds off of the current standards but is also reflective of standards found in case law. The area/dimensional variance is based off of a finding of a practical difficulty while the use variance is based off of a finding of an unnecessary hardship.