



Board of Zoning Appeals

November 2, 2022

Board Meeting

Agenda

5:30 PM

CALL TO ORDER

MINUTES APPROVAL

- Board of Zoning Appeals - Board Meeting - Oct 19, 2022 5:30 PM

BZA FILES

- 2022-BZA-37 : 202 S Edgewood RD - Variance for Fence Height

ADJOURN



Board of Zoning Appeals Meeting: 11/02/22 5:30 PM
City of Mount Vernon Dept: Board of Zoning Appeals
Mount Vernon, OH 43050

SCHEDULED

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

BZA FILE (ID # 3679)

DOC ID: 3679

2022-BZA-37 : 202 S EDGEWOOD RD - VARIANCE FOR FENCE HEIGHT

Item Number	2022-BZA-37
Site Address	202 S Edgewood RD
Parcel Number	66-06582.000
Zoning District	R-1
Presented By	James R. Stallard

Quick Guide to Codified Ordinance Sections (may not be inclusive):
 1178 Fences and Hedges

Request: 7' Fence



City of Mount Vernon, Ohio
Board of Zoning Appeals

Request for Hearing

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, Mount Vernon

Legal Description

12.6 2NPT of 12.00 A

Parcel Number

66-06582.000

Deed Volume and Page Number

B 1423, P 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:

Please see attached Applicant's Statement, October 4, 2022

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 4, 2022

By:

Joan B. Stallard, Trustee

Status of Application

Filing Date

Case Number

Hearing Date

Fee deposit

\$75.00

Date Paid

10/4/2022

Receipt Number

Status of Board's Action

☐ Approved

☐ Denied

Attachment: 2022-BZA-37 Application Packet (3679 : 2022-Bza-37)

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. *Please see attached*

_____ 2) The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district. *Please see attached*

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.

Please see attached

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

Please see attached

_____ 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. *Please see attached*

_____ 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. *Please see attached*

_____ 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. *Please see attached*

Applicant's Statement October 4, 2022

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.

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.

[The three foregoing paragraphs answer Items 3 and 4, Narrative statements]

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.

I believe granting my request for a variance:

1. Would be in accord with the general purpose and intent of regulations imposed by the Zoning Ordinance as stated in Chapter 1151.02 and 1158.04 R-1 and would not affect the R-1 District or the public welfare. [Answer for Item 1, Narrative statements]
2. Would not permit the establishment of any use which is not otherwise permitted in the R-1 District. [Answer for Item 2, Narrative statements]
3. Is necessary for the reasonable use of my property under the conditions now afflicting it and the variance would be the minimum that could accomplish this purpose. [Answer for Item 5, Narrative statements]
4. Will not impair an adequate supply of light or air to adjacent property, or affect congestion on Edgewood Road, the danger of fire, the public safety, or substantially impair property values of the adjacent area. [Answer for Item 6, Narrative statements]
5. Will not confer any privilege on me. [Answer for Item 7, Narrative statements]
6. The essential character of my neighborhood will not be altered substantially and the adjoining properties will only benefit from the fence that controls access of deer into their properties. [Please see attached letters from two abutting property owners.]

It should be noted that the Board of Zoning Appeals set a precedent in issuing a variance [Case 2014-BdZonAp-11, September 3, 2014] for a deer-excluding fence. That fence, constructed with woven wire and timber, was issued for the front yard of 1117 East Vine Street [parcels 66-05290.000 and 66-05289.000]. The attached minutes from that meeting include the rationale for fencing higher than six feet. The permitted deer-excluding fence at 1117 East Vine Street is not materially different by composition or height from the one needed to exclude deer from most of my property. Additionally, the plant-protecting, deer-excluding fencing at 1117 East Vine Street, like mine, is not a privacy fence, as it does not block visual access.

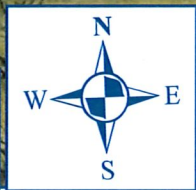
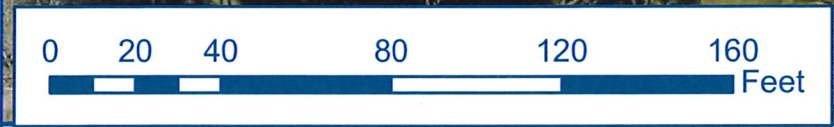
Joan B. Stallard, Trustee 10-4-22
Joan B. Stallard, Trustee Date



2021 Aerial Photo

Legend

- Parcel Line
- Rd. ROW Line
- Township Line



Fence posts on the subject 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 (black lines).

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)

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:

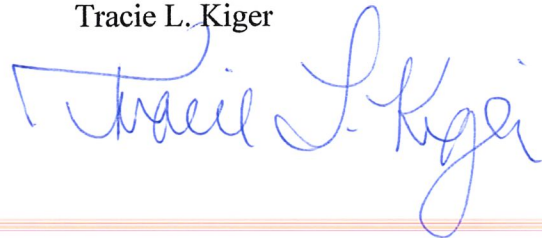
We own parcel 59-00184000 at 204 South Edgewood Road, which abuts to the north a parcel (66-06582000), owned by Joan B Stallard, Trustee. We have no objection to the installation of a woven wire fence between our two properties.

Very truly yours,

Ted W. Kiger



Tracie L. Kiger



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

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: 2014 BZA case referred to (3679 : 2022-Bza-37)

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Board of Zoning Appeals



Minutes of Meeting
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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
 Mary-Anne Pomputius, Chair

Judy L. Cordle
 Judy L. Cordle, Recording Secretary

Attachment: 2014 BZA case referred to (3679 : 2022-Bza-37)