

MINUTES OF THE AVON BOARD OF ZONING & BUILDING APPEALS MAY 4, 2022

MINUTES OF THE REGULAR BOARD OF ZONING AND BUILDING APPEALS  
MEETING HELD MAY 4, 2022 IN COUNCIL CHAMBERS OF CITY HALL

The meeting was opened by Chairman Mark Ladegaard at 7:00 p.m.

Present: Michael Bulger; Bill Hricovec; Mark Ladegaard; Chauncey Miller; Jill Clements, Zoning Enforcement Officer; Pam Fechter, Planning Coordinator; John Gasior, Law Director; Duane Streater, Safety Director; Nicole Rambo-Ackerman, Planning Clerk

Absent: Bruce Klingshirn

MINUTES OF REGULAR MEETING – APRIL 6, 2022

**A motion was made by Mr. Miller, seconded by Mr. Bulger, to dispense with the reading of the minutes of the regular meeting held on Wednesday, April 6, 2022 and to approve said minutes as published. The vote was: “AYES” all. The Chair declared the motion passed.**

ADDITIONS/DELETIONS

BREW KETTLE APPEAL

Randy Parsons of Mann Parson Gray Architects representing Brew Kettle is requesting approval of a one-year time extension from the July 7, 2021 approval of a 6-car stacking variance from C.O. 1292.09(a)(1) Off-Street Waiting Spaces for Drive-Thru Facilities to reduce the number of stacking spaces from 10 to 4 for the carry-out window for Brew Kettle to be located at 33287 Just Imagine Drive.

Ms. Fechter said Mr. Parsons was unable to make it to the meeting but asked if the time extension would be granted. They want to start construction in the next month or so and wanted to make sure they did not run out of time.

**Mr. Miller moved, seconded by Mr. Hricovec, to approve a one-year time extension from the July 7, 2021 approval of a 6-car stacking variance from C.O. 1292.09(a)(1) Off-Street Waiting Spaces for Drive-Thru Facilities to reduce the number of stacking spaces from 10 to 4 for the carry-out window for Brew Kettle to be located at 33287 Just Imagine Drive. The vote was “AYES” all. The Chair declared the motion passed.**

RED TAIL MASTER HOMEOWNERS ASSOCIATION APPEAL

Kenneth Hignett representing Red Tail HOA is requesting a 4 square foot variance from C.O. 1290.05(c)(2) Maximum Sign Area to allow the construction of a replacement entryway sign to be located in the traffic island at the intersection of Nagel Road and Lyons Gate Run.

Kenneth Hignett, 4282 St. Theresa Boulevard, Avon, Ohio, was sworn in. He said there are five entrances to the Red Tail subdivision and they are rebuilding the entrance at Lyons Gate Run. The entrances at St. Maron Drive and St. Francis Drive were rebuilt in 2017 and the main feature was the replacement of the signs with solid black granite monument signs. They are proposing the same design for the Lyons Gate entrance, which is directly across Nagel Road from the St.

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Francis entrance. The St. Francis entrance area is about 25% larger than the Lyons Gate entrance. The proposed sign is about 25% smaller than the sign at St. Francis to better fit the narrower island. The new sign will replace the existing sign which is ten feet long and five feet high.

**Mr. Miller moved, seconded by Mr. Hricovec, to approve a variance of 4 square feet from C.O. 1290.05(c)(2) Maximum Sign Area to allow the construction of a replacement entryway sign to be located in the traffic island at the intersection of Nagel and Lyons Gate Roads. The vote was: "AYES" all. The Chair declared the motion passed.**

KEVIN AND HOLLY LADEGAARD APPEAL

Patti Saracusa of Dover Remodeling representing Kevin and Holly Ladegaard is requesting a 1 foot side yard setback variance from C.O. 1262.04(d)(3) Lot and Yard Requirements to allow the construction of an addition to the existing home located at 3477 Jaycox Road.

**Mr. Bulger moved, seconded by Mr. Miller, to un-table the request for a variance of 1 foot side yard setback from C.O. 1262.04(d)(3) Lot and Yard Requirements to allow the construction of an addition to the existing home located at 3477 Jaycox Road. The vote was: "AYES" all. The Chair declared the motion passed.**

Ms. Clements said the applicants are still working with FEMA and have asked to be tabled until the June meeting.

**Mr. Miller moved, seconded by Mr. Hricovec, to table the request for a 1 foot side yard setback variance from C.O. 1262.04(d)(3) Lot and Yard Requirements to allow the construction of an addition to the existing home located at 3477 Jaycox Road until the next BZBA meeting. The vote was: "AYES" all. The Chair declared the motion passed.**

WILLIAM AND CAROLE LOGAN APPEAL

William and Carole Logan are requesting a 9 foot variance and a 1.68 foot variance from C.O. 1222.02(76)(A) Lot Width to allow the creation of a new single-family lot with the lot width of 91.20 feet and the building setback 98.32 feet to be located south of 3665 Stoney Ridge and north of 3685 Stoney Ridge.

William Logan, 4121 St. Theresa Boulevard, Avon, Ohio, was sworn in and said the 98 foot variance allows the home to be built at a similar angle as the home next door.

**Mr. Bulger moved, seconded by Mr. Miller, to approve a variance of 8.8 feet from C.O. 1222.02(76)(A) Lot Width to allow the creation of a new single-family lot with the lot width of 91.20 feet to be located south of 3665 Stoney Ridge Road and north of 3685 Stoney Ridge Road. The vote was: "AYES" all. The Chair declared the motion passed.**

**Mr. Miller moved, seconded by Mr. Hricovec, to approve a variance of 1.68 feet from C.O. 1222.02(76)(A) Lot Width to allow the creation of a new single-family lot with the building setback of 98.32 feet to be located south of 3665 Stoney Ridge Road and north of 3685**

**Stoney Ridge Road. The vote was: “AYES” all. The Chair declared the motion passed.**

**JOHN AND LISA PALAZZO APPEAL**

John and Lisa Palazzo are requesting a 196 square foot variance from C.O. 1262.08(a)(2) Maximum Area and Number of Accessory Buildings to allow the construction of a gazebo on the existing deck located at 32812 Heartwood Avenue.

John and Lisa Palazzo, 32812 Heartwood Avenue, Avon, Ohio were sworn in. Ms. Palazzo explained that they moved into their home in 2001 and it had an existing wood deck on the back. They have enjoyed using it but have to use umbrellas or temporary metal canvas shades to block the summer sun. The umbrellas and shades are hard to maintain and did not look very good. They would like to replace the wood deck with composite material and install a permanent structure at the same time. Mr. Palazzo said they would like to install a 14-foot by 18-foot structure. They most recently had two 12-foot by 12-foot temporary metal structures which have been removed. The plan is to have the contractor installing the deck install the wood gazebo with vinyl-encased material. They believe it will look a lot better and meet their needs. They have talked to their neighbors and no one has any issues with the project. They feel like it is in the spirit of what the City is trying to do to make things look better.

Mr. Bulger thought they were requesting a pretty large variance, especially with the shed there. He asked if the gazebo could be made smaller. Mr. Palazzo said the proposed gazebo is a little bit smaller than the temporary structures they have been using. He referred to the pictures submitted and explained that there is a slot behind their garage that is set in from the house. The gazebo would only sit about two feet out from the house and it is tucked in more than the previous temporary structures were. Ms. Palazzo thought the new gazebo will be less obtrusive than the temporary structures. Mr. Bulger thought it would probably look better but wanted a foot or two removed from the dimensions to reduce the square footage. Mr. Palazzo thought the extra two feet was nominal compared to the rest of the structure and wanted to maintain the size. Ms. Palazzo explained that they would like to have a seating area and a dining area, which is how the size was determined.

Mr. Hricovec asked if there is an HOA, Mr. Palazzo said there in none.

**Mr. Hricovec moved, seconded by Mr. Miller, to approve a variance of 196 square feet from C.O. 1262.08(a)(2) Maximum Area and Number of Accessory Buildings to allow the construction of a gazebo on the existing deck located at 32812 Heartwood Avenue. The vote was: “AYES” all. The Chair declared the motion passed.**

**JOEY MCCORMICK APPEAL**

Joey McCormick is requesting a variance from C.O. 1262.08(b)(1) Accessory Building Setback Requirements to allow construction of a shed in the side yard located at 2822 Moon Road.

Joey McCormick, 2822 Moon Road, Avon, Ohio, was sworn in. He has yard drains in the

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corners of the property and they kept a lot of the trees on the property line adjacent to his neighbor on French Creek Road. He did not want to put the shed in one of the corners because he did not want to disrupt the land elevation. He thought the shed would fit better on the side of his home by Moon Road and be more protected since the neighbor is so close on the other side. He would like to install a 12-foot by 12-foot shed with a concrete foundation.

Mr. Ladegaard said sheds are not typically allowed in the side yard and thought the applicant has two options. First, he could find another location in the back yard while avoiding the swales. Mr. McCormick did not think that would work because of the swales and trees. Mr. Ladegaard said the structure could be attached to the home and would not require a variance. Mr. McCormick asked how that would work. Mr. Miller said if he moved the structure as close as he could to the house and put a nice looking enclosure that may work. Mr. McCormick wanted to install the building close to the house and match the color of the house siding. He was before the Board a few months ago to get approval for the white vinyl fence around his property. He did not think anyone would see the building with the fence and bushes. Mr. Ladegaard clarified that the Board was not telling him how to attach it to the house, but that it could be and would not require a variance. Mr. McCormick asked if a bracket would work, Mr. Miller wanted to make sure it looked nice. Mr. Gasior said the Board needed to act on the proposal unless the applicant withdrew his application. Mr. McCormick requested his application be withdrawn.

**Mr. Hricovec moved, seconded by Mr. Bulger, to allow the applicant to withdraw the request for a variance from C.O. 1262.08(b)(1) Accessory Building Setback Requirements to allow construction of a shed in the side yard located at 2822 Moon Road. The vote was: "AYES" all. The chair declared the motion passed.**

### ATTILA NAGY APPEAL

George Hofmann of Hofmann-Metzker, Ince representing Attila Nagy is requesting variances of 3 feet and 5 feet from C.O. 1262.04(c)(1)(C) Lot and Yard Requirements to allow a lot split to create a flag lot with only 57 feet of frontage located at 4625 Center Road and Parcel B to have 95 feet of frontage located on Center Road.

George Hofmann of Hofmann-Metzker, 24 Beech Street, Berea, Ohio was sworn in. Mr. Hofmann said the plans were redrawn after the previous meeting. He explained that four parcels are still proposed but the two southerly parcels, Parcels C and D, are 100 feet by 409 feet which meet code. Parcel B used the 5% rule so the frontage proposed is 95 feet to a point 100 feet wide where the house would be built. Parcel A with the existing dwelling now has 57.04 feet of frontage and has 42,720 square feet.

After the vote, Mr. Hofmann asked if there was a waiting period to apply for the lot split approval. Mr. Gasior said the order would be official after the minutes were approved. Ms. Fechter said he should be alright since he would not be on the Planning Commission agenda until June.

**Mr. Bulger moved, seconded by Mr. Hricovec, to approve variances of 3 feet and 5 feet from C.O. 1262.04(c)(1)(C) Lot and Yard Requirements to allow a lot split to create a flag**

**lot with only 57 feet of frontage located at 4625 Center Road and Parcel B to have 95 feet of frontage located on Center Road. The vote was: "AYES" all. The Chair declared the motion passed.**

**HAYDAR BEKTAS**

Haydar Bektas is requesting a variance of 737 square feet from C.O. 1262.08(a)(2) Maximum Area and Number of Accessory Buildings to allow the construction of a 30-foot by 60-foot barn to be located at 36621 Kinzel Road.

Haydar Bektas, 36621 Kinzel Road, Avon, Ohio, was sworn in. Mr. Bektas wants to build a barn. He would like to keep his animals on the first floor and tools for his small construction business on the second floor. He brought his neighbors to the meeting. Mr. Ladegaard explained that the applicant has a little more than an acre and is allowed to have a 1,063 square foot building. Mr. Ladegaard asked if the other storage structures would be removed, Mr. Bektas said they would be. Mr. Ladegaard thought the proposed size was excessive and thought the height was too high. He thought the structure would be at least 31 feet tall based on the plans submitted. Mr. Bektas explained that his home is currently 26.5 feet tall and he plans on building a new house after the barn is built. Mr. Miller thought the size was excessive but thought they could come to a compromise. He also wanted to make sure they took into account future growth of the community. Mr. Bulger thought a 16-foot first floor was very tall and asked if it could be shorter. Mr. Bektas said he could make it 14 feet tall but he was losing space because he was losing 16 to 18 inches from the trusses and concrete. Mr. Hricovec also thought the square footage was excessive.

Gary Smitek, 36715 Avalon Court, Avon, Ohio, was sworn in. Mr. Smitek said he owns the property to the left of and behind the applicant and is opposed to the proposal. He has no problem with people trying to use their property how they want to in general. He would appreciate if the applicant cleaned up the property and put everything in the barn. He said his plan is to construct a road with houses behind the applicant and he thought the proposal was too big. He would be okay with a 30-foot by 40-foot barn, but thinks it is a commercial sized structure that would go into a residential neighborhood.

Lenard DiFrancesco, 36497 Kinzel Road, Avon, Ohio, was sworn in. Mr. DiFrancesco did not object to a barn being built.

Eleanor Stockard, 36651 Kinzel Road, Avon, Ohio, was sworn in. Ms. Stockard had no objections to the proposal. The applicant is a good neighbor.

Cynthia Rice, 35442 Lenox Oval, Avon, Ohio, asked about the street mentioned by Mr. Smitek since she did not know about a planned street. Mr. Ladegaard advised her to speak with Mr. Smitek about his plans after the meeting.

Mr. Ladegaard suggested the applicant decrease the building size to approximately 30 feet by 52 feet as a compromise. Mr. Hricovec suggested granting the variance for square footage and allowing the applicant to determine the building size based on that. Mr. Bulger asked if removing

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the other structures should be added as a contingency in the motion. Mr. Bektas said they are all coming down in order to build the new barn. Mr. Miller asked the applicant to make sure the final design looks nice, especially given the nature of the building. Mr. Bektas said he has maintained his property as long as he has owned the property and just wants to have a little farm for personal use and store the equipment for his business. Mr. Gasior asked if the applicant was aware of the home occupation regulations, Mr. Bektas said he is aware of them and is in compliance. Mr. Hricovec pointed out that the structure height may be an issue. The applicant may need to come back before the Board if a variance is needed for the height of the barn. The building height could not be addressed during the meeting because the neighbors were not notified of the need for a height variance.

**Mr. Hricovec moved, seconded by Mr. Bulger, to approve the amended variance from C.O. 1262.08(a)(2) Maximum Area and Number of Accessory Buildings to allow the construction of a 1,560 square foot barn to be located at 36621 Kinzel Road. The vote was: "AYES" all. The Chair declared the motion passed.**

EILEEN SOUCEK APPEAL

Eileen Soucek is requesting a variance for opacity from C.O. 1294.08(a)(3) Fence Location, Height and Opacity to allow the existing 3 feet 6 inch board-on-board fence to remain in its current location. They are also asking for a variance of 2 feet in height and in opacity from C.O. 1294.08(a)(3) to allow a 6 foot board-on-board fence to extend 16 feet from the front of the house located at 33581 Schwartz Road.

Ryan Felice, 33581 Schwartz Road, Avon, Ohio was sworn in. Mr. Felice said Ms. Soucek is his mother-in-law and owns the home. He lives there and built the fence. Mr. Gasior said a letter from the homeowner should have been submitted stating that Mr. Felice could speak on her behalf. Mr. Felice said someone at the City told him any of the three of them could be at the meeting.

Mr. Felice said they are trying to get as much privacy as possible. He was told he could build the fence to the street. He did not think the shadowbox fence would be an issue going down the property line but he thought the issue was the fence extending from the front of the garage to about eight to ten feet off the sidewalk. Mr. Ladegaard explained that the code limits the opacity of the fence in the front yard: for every ten inches of fencing, there needs to be at least three inches of opening compared to the seven inches of blockage. Mr. Felice explained that the fence is 3 feet 6 inches tall but the ground still needs to be leveled out. Mr. Ladegaard said the opacity is required for safety purposes; Mr. Felice added that one can see over the fence. Mr. Ladegaard asked if the applicant wanted to extend the six-foot high fence into the front yard 16 feet, Mr. Felice said the shadowbox fence would be extended. Mr. Hricovec suggested installing some arbor vitae to add more privacy without needing a permit or variance.

Jeff and Deanna Popovich, 33593 Schwartz Road, Avon, Ohio were sworn in. Ms. Popovich said they have lived in their home for 15 years and knew the Souceks. She said they submitted a letter outlining their reasons against the proposal. When they drove around looking at other fences in the City, they did not see any other fences that looked like what was installed by the applicant.

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She added that they are not opposed to the fence in the back or side yards. They are not opposed to the fence being in the front yard but did oppose that one cannot see through it. She thought that the applicant installed the fence against the regulations required when the permit was pulled. Landscaping was installed along the property line when the Popovich's moved in but was removed to install the fence. When they go outside, all they see is the solid fence, not the natural landscaping. The corner is very busy and there is a long turn lane, so their property is highly visible. Ms. Popovich was concerned about visibility through the fence since the driveways and roads are not lit unless done by the property owners. Mr. Popovich said the fence blocks the sidewalk when drivers are backing out of their driveway.

Mr. Ladegaard suggested the opacity be decreased. A shadowbox fence would not provide enough opacity since it would still look solid from straight-on. Mr. Ladegaard added that the boards would need to be spread out a little bit to decrease the opacity sufficiently. Mr. Miller said it is a safety issue, even though landscaping could be installed.

Mr. Ladegaard asked how much further the six-foot fence would extend into the front yard, Mr. Felice said it would be one more eight-foot panel. Ms. Popovich said she was not informed of that. Mr. Popovich thought that would set a bad standard for the residents in Avon since they are on a busy corner. Mr. Felice said the Popovich's have security cameras pointed at his house on his children which is why he wants the fence. Mr. Felice said the six-foot high fence currently extends four feet past the front of the house. Mr. Ladegaard confirmed with the applicant that the total distance the six-foot shadowbox fence would extend past the house would be 12 feet. The boards on the four-foot fence would need to be rearranged to allow openness between the boards as required.

Mr. Popovich did not think the six-foot fence should be extended further. Ms. Popovich did not think there would be much more room if the six-foot fence is extended and thought it would be a bad precedent for the rest of the community. She believed they were being giving on two of three requested variances but was upset that they were proposing to extend the six-foot fencing. Mr. and Ms. Popovich did not agree to allowing the extension of the six-foot fence. Mr. Hricovec asked if the six-foot fence section would extend to the pine tree shown in the photo, Mr. Felice said it would. Mr. Hricovec then asked how much the tree already impacts visibility and whether the fence would need to be extended. Mr. Felice said some of the previous landscaping was dead, so they removed it to install the fence. Mr. Miller asked if the additional length of six-foot fencing is needed, Mr. Felice said he would like it. Mr. Popovich wanted to keep the six-foot fencing where it was installed already. Ms. Popovich pointed out that it was not Mr. Felice's house. Mr. Hricovec suggested having the six-foot fence extend another eight feet as a board-on-board style and then space the boards out for the four-foot tall section. Mr. Popovich thought it would look weird because the yard is visible from the corner and there would be three different types of fencing. Ms. Popovich did not want the fence extended because the view from her front door would be blocked that much more. Mr. Miller said development is common and hoped they could come to a reasonable compromise.

**Mr. Miller moved, seconded by Mr. Hricovec, to approve the variance for 50% opacity for**

**the 4-foot tall board-on-board fence extending from the six-foot fence from C.O. 1294.08(a)(3) Fence Location, Height and Opacity at 33581 Schwartz Road. The vote was: “AYES” all. The Chair declared the motion passed.**

**Mr. Hricovec moved, seconded by Mr. Miller, to approve the variance of 2 feet for the six-foot fence extending 12 feet from the front of the garage from C.O. 1294.08(a)(3) Fence Location, Height and Opacity at 33581 Schwartz Road. The vote was: Mr. Bulger, Mr. Hricovec, Mr. Miller voted “NAY”; Mr. Ladegaard voted “AYE”. The Chair declared the motion denied.**

After the votes, Mr. Popovich stated that he did not object to the current location of the six-foot fence and he did not want to have the six-foot fence removed that extended in front of the garage. Mr. Ladegaard suggested revisiting the motion to allow the existing fence to remain. Mr. Gasior said the Board could make a motion to reconsider the six-foot 100% opacity fence to remain in the front yard.

**Mr. Bulger moved, seconded by Mr. Hricovec, to reconsider the previous motion and allow the 6-foot board-on-board fence to extend 4 feet into the front yard at 33581 Schwartz Road. The vote was: “AYES” all. The Chair declared the motion passed.**

#### AMERICAN CONSTRUCTION GROUP, LLC APPEAL

Joseph Pfundstein representing American Construction Group, LLC is requesting approval to reinstate their Contractor’s Registration with the City of Avon.

**Mr. Miller moved, seconded by Mr. Hricovec, to un-table the appeal from American Construction Group, LLC to reinstate their Contractor’s Registration with the City of Avon. The vote was: “AYES” all. The Chair declared the motion passed.**

**Mr. Bulger moved, seconded by Mr. Hricovec, to table the appeal from American Construction Group, LLC to reinstate their Contractor’s Registration with the City of Avon until the next BZBA meeting. The vote was: “AYES” all. The Chair declared the motion passed.**

#### COMMENTS

Mr. Bektas asked if an overhang installed on his barn would be considered part of the building. Mr. Ladegaard said overhangs are included in the building square footage.

Dan Birkheimer, 36120 Kinzel Road, believed he was supposed to be on the agenda. Ms. Clements checked to see where his application was. Mr. Birkheimer was concerned about his construction quote expiring before the next meeting. Ms. Clements said she would work with him to set up a special meeting as soon as possible but notice would need to be given to his neighbors. Mr. Birkheimer explained that his backyard is along Kinzel Road and he wants to build a barn where he can access it without it being in the middle of his yard.

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Mr. Gasior let the Board know that a motion was not needed when the applicant withdrew their proposal earlier in the meeting. He also suggested the Board be more consistent about applicants providing written documentation allowing someone who is not the property owner speaking on their behalf at the meetings.

ADJOURN

**Mr. Bulger moved, seconded by Mr. Miller, to adjourn the meeting at 8:31 p.m. The vote was: "AYES" all. The Chair declared the motion passed.**

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Mark Ladegaard, Chair

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Nicole Rambo-Ackerman, Clerk

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DATE