

**Amherst Zoning Board of Appeals
206 South Main Street
Amherst, Ohio 44001**

April 26, 2023

6:30pm

Present:

Don Anderson

Bob Valenti

Al Berezney

Terry Tomaszewski

Excused:

John Jeffreys

Other City Officials:

Mayor Costilow

Atty. Ward

David Macartney

Tammy Paterson

Mr. Tomaszewski opened the meeting at 6:50pm.

Mr. Tomaszewski swears in everyone that will be speaking at this meeting.

1. Mr. Larry Hess residing at 45640 North Ridge Road requesting two (2) variances.

1. Chapter 1145.14(b): Only one (1) driveway permitted per lot in a residential area. Variance requested is for a secondary driveway west side of property to access accessory structure.
2. Chapter 1145.05(b): Largest accessory structure not to exceed 574 sq. ft. Variance requested is for an additional 864 sq. ft to build a 32x48 sq. ft. accessory structure.

Mr. Hess stated the plan is to remove two accessory buildings and replace it with the new 32x48 building if allowed. Mr. Hess stated this new building will fit perfectly where the two buildings are currently so there would be no changes in the looks of the neighborhood. Mr. Hess stated they would also like to install a new driveway to the new building. Mr. Hess stated their septic system is in the middle of the front yard so there is no way they can extend their existing driveway. Mr. Macartney stated this new building would be around 125 ft front road and the two existing building will be coming down. Mr. Macartney also confirmed that the septic system is in the front yard so they would not be able to install a driveway over it. Attorney ward had not additional comments.

After deliberations, the Board made the following findings:

Variance Request No. 1

- Given the lot's exceptional size and uniqueness, the requested variance is not substantial for this property. While this determination alone is not sufficient to justify the variance, it is important, especially in the context of other factors.
- The requested variance would not substantially alter the essential character of the neighborhood, and the adjoining properties would not suffer a substantial detriment as a result of the variance. There are multiple properties on North Ridge Road which already include dual driveways. None of the adjacent property owners has any objection to the proposed second driveway. The requested variance is consistent with the surrounding neighborhood.
- The requested variance would not adversely affect the delivery of governmental services.
- The property owner was not aware of the recently amended ordinance when he bought the property.
- The spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance.
- The proposed new driveway would be concrete or asphalt and must comply with all City-required specifications.

It is the decision of the Board to reverse the decision of the Building Official and approve your request for a variance allowing the installation of a second driveway. Approved 4-0

Variance Request No. 2

- Given the lot's exceptional size and uniqueness, the requested variance is not substantial for this property. While this determination alone is not sufficient to justify the variance, it is important, especially in the context of other factors.
- The requested variance would not substantially alter the essential character of the neighborhood, and the adjoining properties would not suffer a substantial detriment as a result of the variance. There are multiple properties on North Ridge Road which already include dual driveways. None of the adjacent property owners has any objection to the proposed second driveway. The requested variance is consistent with the surrounding neighborhood.
- The requested variance would not adversely affect the delivery of governmental services.
- The property owner was not aware of the applicable zoning restriction when he bought the property.
- The spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance.

It is also the decision of the Board to reverse the decision of the Building Official and approve your request for a variance allowing the building of a 32 ft. x 48 ft. accessory structure, 960 sq. ft. larger than allowed by ACO § 1145.05(b). Approved 4-0

2. Mr. Marc Armbrrecht residing at 802 Shadow Creek requesting a 39" variance for fence height. Chapter 1151.01 states no fence shall exceed six feet in height.

Attorney Ward stated it his legal opinion that since Mr. Valenti received a courtesy notice for this agenda item, he is abutting to the property, he should recuse himself from this agenda item. Mayor Costilow has appointed himself to sit on the Zoning Board of Appeals for this agenda.

Mr. Armbrrecht stated when his fence was erected, they had added three pergolas to the top of the fence without the proper approvals through the building department. Mr. Armbrrecht stated he spoke to the Building Department prior to the fence being installed but not about the pergolas. Mr. Armbrrecht stated he was not aware of the 6 ft fence rule. Mr. Macartney stated only the posts are allowed six inches past the fence paneling so they can have caps but nothing else is allowed. Mr. Macartney stated it is a very nice-looking fence, but the pergolas are taller than allowed by code. Mr. Berezney asked how difficult it would be to take off. Mr. Armbrrecht stated they would take some effort since they were designed for the fence. Attorney Ward asked if Mr. Armbrrecht had contacted his contractor about removing. Mr. Armbrrecht stated he would need to pay them more to remove them. Attorney Ward asked if there were residential homes on the side of the fence. Mr. Armbrrecht said yes. Attorney Ward asked if the applicant reviewed the fence ordinance prior to installing the fence. Mr. Armbrrecht stated he could not find it. Attorney Ward asked what was the function of the pergolas? Mr. Armbrrecht stated it was for hanging baskets and more scenic than anything else. Mr. Tomaszewski asked if the pergola's hung over the fence onto the abutting neighbor's property. Mr. Armbrrecht said no.

After deliberations, the Board made the following findings:

- Without the requested variance, the property at 802 Shadow Creek Trail, Amherst, Ohio 44001 (the "**Property**") would still yield a reasonable return. The property owners did not provide the Board with any information demonstrating otherwise. Also, without the requested variance, the Property would still retain a beneficial use. The property owners admitted as much in their Application for Variance Approval when they stated: "Lack of variance would not affect property use."
- The requested variance of 39 inches amounts to more than 54% of the permissible height of a fence under ACO §1151.01. Accordingly, the requested variance is substantial for this property. While this determination alone is not sufficient to justify denying the variance, it is important, especially in the context of other factors.
- The requested variance would substantially alter the essential character of the neighborhood, and the adjoining properties would suffer a substantial detriment as a result of the variance. A 111-inch fence is not consistent with the surrounding neighborhood and negatively impacts the appearance of such neighborhood. Indeed, neighboring property owners appeared before the Board and expressed their objections to the non-compliant fence.

- The requested variance would not adversely affect the delivery of governmental services.
- The property owners obtained information from the City of Amherst Building Department relating to the fence restrictions contained within local ordinances. The property owners also provided a design plan for the proposed fence to the Building Department and secured a permit through Elyria Fence Inc. based upon that specific design. However, the property owners later substantially changed the design and height of the fence to include pergolas without notifying the Building Department or receiving the requisite local approval. The fence that was ultimately erected was not consistent with the design for which the Building Department issued a permit.
- The requested variance would not obviate any predicament of the property owners.
- The spirit and intent behind the zoning requirements would not be observed and substantial justice would not be done by granting the variance.
- The property owners have not encountered “practical difficulties” that would entitle them to the requested variance.

It is the decision of the Board to uphold the decision of the Building Official and deny your request for a variance to allow a previously constructed fence with a height of 111 inches, 39 inches higher than permitted by ACO § 1151.01, to remain in its current state. Denied 4-0

3. Mr. Mark Zakrajsek residing at 1002 N. Quarry Rd. Mr. Zakrajsek is requesting two variances:

1. Chapter 1145.05(b)(1): Largest accessory structure not to exceed 576 sq. ft. Variance requested is for an additional 384 sq. ft. to build a 940 sq. ft. accessory structure.
2. Chapter 1129.03(a): No building may project nearer to the street than the average established setback of 81’ for the residential structure fronting Milan Avenue. Variance requested is for 27’ encroachment into front hard setback (secondary front yard of corner lot).

Mr. Zakrajsek stated they recently built a house across from IGA and would like to build their accessory structure to help with sound and block out the view of IGA. Mr. Zakrajsek stated they have a row of trees to block the neighbor’s view of the accessory structure and the building would not block any view for transportation. Mr. Zakrajsek stated there is no houses across the street from them so it would not affect the neighbors on either side. Mr. Zakrajsek stated the building would sit about 74’5” from the center of the street and site about 67’ from the back of the property. Mr. Macartney stated the variance for the accessory structure is 384 sq. ft. and the setback is based on the houses on Milan Avenue. Mr. Macartney stated this was an unusual build since the owners of the property were responsible for multiple items that normally the builder would take care of. Attorney Ward had no questions or comments.

After deliberations, the Board made the following findings:

Variance Request No. 1

- Without the requested variance, the property at 1002 N. Quarry Rd., Amherst, Ohio 44001 (the “**Property**”) would still yield a reasonable return. The property owner did not provide the Board with any information demonstrating otherwise. Also, without the requested variance, the Property would still retain a beneficial use.
 - The requested variance of 384 sq. ft. amounts to more than 66% of the permissible size and is substantial for this Property. While this determination alone is not sufficient to justify denying the variance, it is important, especially in the context of other factors.
 - The requested variance would substantially alter the essential character of the neighborhood, and the adjoining properties would suffer a substantial detriment as a result of the variance. The requested variance would not be consistent with the surrounding neighborhood.
 - The requested variance would not adversely affect the delivery of governmental services.
 - The property owner purchased the Property with knowledge of the applicable zoning restriction.
 - The spirit and intent behind the zoning requirement would not be observed and substantial justice would not be done by granting the requested variance.
- Variance Denied 4-0

Variance Request No. 2

- Without the requested variance, the Property would still yield a reasonable return. The property owner did not provide the Board with any information demonstrating otherwise. Also, without the requested variance, the Property would still retain a beneficial use.
- The requested variance allowing an encroachment of twenty-seven feet into the front-yard setback is substantial for this Property. While this determination alone is not sufficient to justify denying the variance, it is important, especially in the context of other factors.
- The requested variance would substantially alter the essential character of the neighborhood, and the adjoining properties would suffer a substantial detriment as a result of the variance. The requested variance would not be consistent with the surrounding neighborhood.
- The requested variance would not adversely affect the delivery of governmental services.
- The property owner purchased the Property with knowledge of the applicable zoning restriction.
- The spirit and intent behind the zoning requirement would not be observed and substantial justice would not be done by granting the requested variance.

It is the decision of the Board to uphold the decision of the Building Official and deny Variance Request No. 1. It is also the decision of the Board to uphold the decision of the Building Official and deny Variance Request No. 2. Denied 4-0

4. Mr. Berezney motions to move into deliberative session, seconded by Mr. Anderson.
Approved 4-0

5. Mr. Berezney motions to reconvene into regular session, seconded by Mr. Valenti.
Approved 4-0

6. Approval of minutes from March 29, 2023: Mr. Anderson motions to approve the minutes, seconded by Mr. Valenti. Approved 4-0

7. Next scheduled meeting will be May 31, 2023, at 6:30pm. Approved 4-0

8. Adjourn: Motion made to adjourn at 8:28pm by Mr. Valenti, seconded by Mr. Anderson.
Approved 4-0

<u>Terry Tomaszewski</u>	5/9/2023	<u>Tammy H. Paterson</u>	5/9/23
Terry Tomaszewski, Chairman	Date	Tammy Paterson, Secretary	Date