

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

June 28, 2023

6:30 pm

Present:

Al Berezney
Bob Valenti
Terry Tomaszewski
Don Anderson

Excused:

Tammy Paterson
John Jeffreys

Other City Officials:

Atty. Patrick Ward
David Macartney

Mr. Tomaszewski opened the meeting at 6:35 pm.

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

1. Mr. Justin Weese, residing at 195 S Leavitt Road is seeking a variance to install an accessory structure measuring 600 sq. ft., 24 sq. ft. larger than permitted by local ordinances. Mr. Weese was unable to attend the meeting. Mr. Macartney provided an explanation to the Board that Mr. Weese is seeking to construct 600 sq. ft. accessory structure in place of an accessory structure that previously existed onsite. Mr. Macartney stated the building department received a call from a neighboring property owner inquiring about the proposed project who had no issues after having spoken with Mr. Weese. Mr. Berezney requested clarification as to what the structure will be used for. Mr. Macartney stated it will be used as a garage. Mr. Ward stated the law department had no comments.

After deliberations, the Board found the following findings:

- Given the property's large size, 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.
- The requested variance would not adversely affect the delivery of governmental services.
- The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the requested variance.

It is the decision of the Board to reverse the decision of the Building Official and approve the requested variance allowing a 600 sq. ft. accessory structure, 24 sq. ft. larger than permitted under ACO § 1145.05(b)(1). Approved 4-0

2. Mr. David Robinson, residing at 1016 Milan Avenue is seeking variances to install an accessory structure measuring 1,500 sq. ft., 924 sq. ft. larger than permitted by local ordinances and measuring 18' in total height, 2' higher than permitted by local ordinances. Mr. Robinson provided an explanation to the Board that he received a letter regarding some property maintenance issues with the items stored in his yard. Mr. Robinson explained all of the things he intends to store in the proposed building including, but not limited to, a 28' camper, backhoe, riding mower, numerous vehicles, motorcycle, etc. to keep the property neat. Mr. Robinson explained the need for the additional height due to the number of items to be stored in the proposed structure including the camper. Mr. Robinson provided an explanation as to the proposed metal building and color scheme. Mr. Macartney stated the building department had no further comments. Mr. Tomaszewski requested clarification of the total dimensions of the proposed structure. Mr. Robinson confirmed the dimensions to be 30'x50'. Mr. Tomaszewski requested clarification that the existing accessory structure, larger than permitted by local ordinance for a secondary accessory structure, is not part of this application and would be required to be removed if the current variance is approved. Mr. Macartney confirmed the existing building would need to be removed or an additional variance applied for and approved to have both structures onsite. Mr. Ward stated the law department had no comments.

After deliberations, the Board found the following findings:

Variance Request No. 1

- 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.
- The requested variance would not adversely affect the delivery of governmental services.
- The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the requested variance.
- The size and height of the proposed structure would be consistent with the surrounding residential properties.

Variance Request No. 2

- 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.
- The requested variance would not adversely affect the delivery of governmental services.
- The spirit and intent behind the zoning requirements would be observed and substantial justice would be done by granting the requested variance.
- The size and height of the proposed structure would be consistent with the surrounding residential properties.

It is the decision of the Board to reverse the decision of the Building Official and approve your requests for the following variances: (A) Variance Request No. 1 allowing a 1,500 sq. ft. accessory structure to be constructed, 924 sq. ft. larger than permitted by ACO § 1145.05(b)(1); and (B) Variance Request No. 2 allowing an accessory structure to be constructed with a height of eighteen feet, two feet higher than permitted by ACO § 1145.05(c). Approved 3-1 (Mr. Valenti-No)


3. Attorney Jon Clark, representing Mr. and Mrs. Roth residing at 47965 Cooper Foster Park Road, is appealing written notice of violation of recently adopted legislation contained in chapter 1145.06 of the Amherst codified ordinances restricting the placement of temporary storage units. Attorney Clark requested clarification of the address contained in the notice of violation as it was not the subject of the appeal. Mr. Tomaszewski questioned whether Attorney Clark needed to be sworn to provide information. Mr. Ward stated that Attorney Clark is representing a client and therefore would not require being sworn to provide information. Attorney Clark explained the basis of the appeal based on the letter issued to the property owner. Mr. Roth confirmed the location of the temporary storage unit for the Board on a satellite image of the property. Attorney Clark stated the new legislation took affect on May 8, 2023, and therefore a condition existing prior to the passage of the new legislation would be “grandfathered” unless it was discontinued for a period of two years. Mrs. Roth stated the storage container has been in place since 2017. Mr. Macartney stated the notice was issued in response to the recently passed legislation under the assumption it would pertain to existing conditions. Mr. Ward stated there is adequate case law in the state of Ohio, including the Ohio supreme court, and a statute contained in ORC 713.15 indicating zoning ordinances cannot be applied retroactively. Mr. Ward stated that Attorney Clark is correct that due to the fact that the temporary storage unit was in place prior to the new legislation and would be considered a retroactive application of the new zoning ordinance. Mr. Ward recommended to the Board that the temporary storage unit currently in place, due to the time which it was placed, would be considered a permitted non-conforming use and therefore a variance would not be required. Mr. Ward clarified that if the non-conforming use is discontinued for a period of two years, any use of the property would have to conform to the current ordinance. Mr. Ward recommended no action by the Board is required on this application because a variance is not necessary.

After deliberations, the Board found the following findings:

Based upon advisement of the City’s Assistant Law Director, the Board has concluded that retroactive enforcement of zoning law in this matter would be contrary to Section 713.15 of the Ohio Revised Code, ACO § 1147.01(a), and well-established caselaw in the State of Ohio, including certain holdings of the

Ohio Supreme Court. Accordingly, no variance is required, and your application filing fee for this appeal will be refunded to you.

4. Mr. Berezney motions to move into deliberative session, seconded by Mr. Anderson. Approved 4-0
5. Mr. Anderson motions to reconvene into regular session, seconded by Mr. Valenti. Approved 4-0
6. Approval of minutes from May 31, 2023: Mr. Berezney motions to approve the minutes, seconded by Mr. Valenti. Approved 4-0
7. Next scheduled meeting will be July 26, 2023, at 6:30pm. Approved 4-0
8. Adjourn: Motion made to adjourn at 7:32 PM by Mr. Anderson, seconded by Mr. Valenti. Approved 4-0


Terry Tomaszewski, Chairman Date


David Macartney, Building Official Date