

BOARD OF ZONING APPEALS MEETING
THURSDAY, May 25, 2023 5:30 P.M.
COUNCIL CHAMBERS
40 W MAIN ST, NEWARK, OH 43055

MINUTES
PUBLIC HEARING

1. CALL TO ORDER

CALL TO ORDER- Steve Layman Board Chair called the Thursday May 25, 2023 Board of Zoning Appeals Meeting to order.

Present:

George Carter	Zoning Inspector
Phil Claggett	Member
Eddie Hunt	Member
Steve Layman	Board Chair
John Paul	Member

Absent: Jack Gienger Member

2. APPROVAL OF MINUTES

Minutes of the April 27, 2023 meeting

Motion and second to approve minutes of April 27, 2023, motion passed by acclamation

3. OLD BUSINESS

4. NEW BUSINESS

APPLICATION BZA-23-11

Applicant: David Rhodes
Owner: David Rhodes
Location: 1110 Mt. Vernon Rd.
Project: Fence
Reference: 88.2

David Rhodes - If you will allow me I want to approach you to show you a diagram. We own the property at 1110 Mt. Vernon Rd. For many years we've had an ingress off Mt. Vernon Rd., we want to upgrade, which has a gate and we ask that our customers close the gate, as time moves on less customers close the gate and the gate remains open, so we've looked at electronic gates which we installed our first one at our north town location and we've decided that we would like to bring our customer base in off of Deo/Waterworks Rd. as drawn there and put an electronic gate there. We're going to do the one on Country Club next then this one. The code

requires a variance because the code reads a four foot fence height and I'd like to have a 6 foot fence height.

Mr. Layman - Where's the gate?

Mr. Rhodes - Where the opening is at, right there.

Mr. Layman - Out on the road?

Mr. Rhodes - No, no, no. It would be held back.

Motion to approve, second, Motion passed 4-0 as long as it is not in the right of way

APPLICATION BZA-23-16

Applicant: Amy Jordan

Owner: Amy Jordan

Location: 1429 Granville Rd.

Project: Home Business

Reference: 16.4

Amy Jordan - I am here today to ask for a conditional use permit to run my business from my home at 1429 Granville Rd. For 23 years I was the owner/manager at the Fred Astaire dance studio in Westerville. In August of 2022 I sold my franchise, this March I purchase the Newark property. After semi-retiring I realized how much I missed teaching. It's my passion to show people how fun and easy it is to learn how to dance. I started in the business 30 years ago with no dance experience, learning to dance has brought me great joy and I want to continue to share that joy with people in Newark. Appropriately the name of the company will be Joy Dance Inc., doing business as Dance Joy Studios. My goal is to offer private dance lessons to adults, both singles and couples, private lessons one on one sessions and each one is 40 minutes in duration. I'd like to teach 10-15 lessons per week and keep the client base under 25 students. My main means of advertising will be social media and word of mouth, my lessons will be appointment only. I will be conducting my business in the building behind the house which affectionately we call the Dog House, based on the weathervane with the dog as part of its unique design. There's ample parking with a circular drive and an area in front of a separate two car garage located next to the Dog House. The Dog House also has a kitchen and bathroom and area perfect for individual instruction. One reason I chose to relocate to Newark is the lack of ballroom and social dance instruction in this area and the projected growth from Intel and other cutting edge industries coming to the area.

Thomas Campbell, 509 Wayne Dr. - My property adjoins and abuts the subject property to the east. I'd like to give some history about this property that is the subject. The 3 acres that is the subject tonight was recently owned by Mr. and Mrs. Arnold who owned the Newark Rapid Transit Bus Company. They have a small house behind the main house which was used as their servants quarters. They also have a large garage further west from the small house. When they planned Arnold Manor in 1952 they created restrictive covenants, by including them in the deeds

that were given, they weren't; included in the plat, but in each deed as the deed was issued. The restrictive covenants are described as applying to all of the property in this part of Arnold Manor. The restrictive covenants, which, if more restrictive than zoning, I think should apply. The first number one of the restrictive covenants says the property should be used for residential purposes only. It shows on the plat as being the reserved homestead property, restrictive covenant number 5 in the deeds that were issued has a provision that says no garage or other out building shall be used for residence or dwelling purposes except servants of the occupants of the main dwelling upon the premises. So it appears to me by including that provision they consider that homestead reserved property to be subject to the restrictive covenants otherwise they would not have included such a provision. So, if the restrictive covenants apply, then this application should not be allowed. A couple other points, the Newark City Code as modified in 2013 allows as a conditional use, home occupation, the 2009 version allowed the conditional use home business, so the question is what is a home occupation, does it differ from a home business. There is no definition in the code for home occupation. The home business is defined which I am sure you are all aware of, the home business if we consider that to be the same as home occupation is defined as a service business conducted by a resident occupant with no retail sales and no employees. So the other question would be if home business is to be used for home occupation, is the sale of dance lessons a retail sale. In other words, would it be subject to sales tax. A retail sale is not defined in the zoning code, service business is not defined in the zoning code, so we're left with all of those questions. My concern, obviously, is peace and quiet, when I read the application it says the request is to use the property for a one on one dance studio, dancing usually requires two people and also the number of people depends on the type of dancing, for ballroom dancing one or two persons would be dancing, if we're doing polka dancing obviously you need more people, louder music, accordians, that sort of thing, rap dancing that's a whole different matter, square dancing would be a group of people, is that one on one lessons, that sort of thing. So, my concern of course is peace and quiet and noise and the fact that I think the restrictive covenants that were contained in all the deeds to Arnold Manor should control and they say residence purposed only.

Mark Patznick - I'm here for my mom, she lives in the property that butts up against this one, I'm just concerned she talks about a dance studio, but I had also heard talk about a wedding venue or something and I'm just concerned that if it turns into something like that we'll have 200 drunks every weekend next to Mom's house and she's used to the peace and quiet from the past 30 years, if it's zoned for a dance studio, down the road could a wedding venue be put in?

Dave Larue - I'm with Amy Jordan, you had a point as to dance lessons and that sort of thing and whether it is retail sales. The question about

retail sales, at least over in Columbus, dance lessons are not charges sales tax, so from that aspect it would be my experience that they are not considered retail sales and are not taxable. So, I don't know whether that helps answer that question or not, but that is just something I was aware of because of my background. We also like to respect individuals, their peace and quiet, so I don't know if there is anything we can do to assure that is met to their satisfaction. Usually the lessons are done and concluded by 9pm in the evening, so again, I don't know if that's something of consideration.

Mr. Carter - Mr. Patznick, I'll clarify for Mr. Layman here, this is not a request for a zoning change tonight. If they allow the home based business here, that's strictly what it is, they cannot take what we grant here tonight and operate a wedding venue, unless they go to Council and change their zoning district. That's a Council meeting, Planning Commission and again notification to the public for that process. Does that answer your question?

Citizen - Kind of. So, if it's changed tonight it would be strictly this dance thing and nothing else could ever go in there?

Mr. Carter - They are requesting a conditional use and the board may or may not grant a conditional use tonight and that would be again based on these exact conditions that are decided as of tonight. It would be so, if we were to say you can run a dance studio from 8-4pm with only one client per day, that would be the conditions, that's all they could do, they couldn't just decide to bring in ten clients and run until 10pm at night.

Citizen - Because it's also been mentioned to me, an Air BNB, a wedding venue, you know I'm hearing these different things talked about as far as this piece of property goes.

Mr. Layman - That's not what's in front of us, what's in front of us is a one on one dance studio, it doesn't open it up to anything other than that.

Citizen - Does this line of change open it up to an easier transition into any of those other things?

Mr. Layman - No. Let me give you some background Tom, first of all, we don't have anything to do with the covenants. If the covenants prohibit it, that's law. You can take it up with an attorney, I think you probably know a couple good ones, but we don't have anything to do with covenants, okay. They now know that they're in it and that may be a problem, they have to figure that out. If we give them approval to do this, covenants, they are what they are. We have granted a dozen home occupation conditional uses over the last 4 or 5 years. Most of these are things that people come and ask for because they are law abiding citizens and if they just did it, you would never know they were there. You read some of them, the typical restrictions we place on it, no advertising, no deliveries, no retail sales, by retail sales, we mean someone is coming there to buy a product, nobody's coming to buy a product, no employees and no signage. So, if I understand what she's doing correctly and what she's applied for is one on one dancing. To me, one on one and we can clarify it, means one and

one, she's the one, they're one. So she'll have one person come visit her, they'll go in the cabin, practice dancing for however long the session is and that one person leaves. Can she have another one come later, maybe. That's what we're talking about, I don't think you'll ever know if it is as applied for, you're never going to know they're there. Typical home occupation, you'll never know they're there. Anyway, that's some history. This does not give them permission to do anything else, it's nothing to do with and Air BNB, nothing to do with a wedding venue, it is a person coming to visit here for a period of time to have a dance lesson and then leave.

Mr. Claggett - What would your hours be?

Ms. Jordan - He said 9pm, but to tell you the truth I don't want to be teaching at 10pm so 8pm would be fine. The last lesson could be at 8pm and be done by 8:45pm, people would be gone, or I could have the last lesson gone by 8pm.

Mr. Claggett - Would a timeframe noon to 8pm Monday through Friday be acceptable? Two people maximum.

Ms. Jordan - Yes, noon to 8pm would be fine.

Motion to approve conditionally with hours being noon-8pm Monday through Friday with no more than two people plus one instructor and a 6 month trial period, Second, passed 4-0

Mr. Layman -He's raised the issue of your subdivision covenants, that's totally out of our purview and if the neighbors say you can't do it because of the covenants, a judge will have to decide that. Six months we come back.

Mr. Carter - We'll be back, I want to say the third Thursday in November, Thanksgiving interferes with the 4th Thursday.

APPLICATION BZA-23-18

Applicant: Jess Hicks
Owner: Jess Hicks
Location: 40 Homewood
Project: Detached Garage
Reference: 86.3.2

Jess Hicks - I'm just looking to build a 30x32 pole building. The issue lies with wanting to put a 10x30 lean-to off the gable end facing the back of the house. I didn't realize initially when I had the plans drawn up for the building that the lean-to would be part of the footprint of the building, so that's where the issue lies is having the lean-to added to the building. The building size itself is the size you guys told me I could build on the property with coordinates with the property lines and everything.

Mr. Layman - For personal use?

Mr. Hicks - Yes, just some extra outside seating is all I'm wanting.

Motion to approve for personal use only, second, passed 4-0

APPLICATION BZA-23-19

Applicant: Connie Hewitt
Owner: Connie Hewitt
Location: 397 Florence St.
Project: Attached Garage/Sheds
Reference: 86.3.1/16.8

Connie Hewitt - I was looking for a stay on the attached garage that is already there. The property is kind of awkward, all of the property is a front yard, but there is no accessibility to it because of the freeway. There's also a shed that is sitting on it and it's supposed to be in the back yard, but there is no back yard.

Mr. Layman - Would you be willing to combine the lots?

Ms. Hewitt - Yes

Mr. Carter - The only thing with the City of Newark and Property Maintenance Division would be if this building addition encroaches onto State property or onto the alley, I would need to go out and verify that.

Ms. Hewitt - It doesn't.

Motion to approve subject to compliance with Property Maintenance and combining the lots, second, motion passed 4-0

APPLICATION BZA-23-20

Applicant: Tyler Harriman
Owner: Tyler Harriman
Location: 565 Granville St.
Project: Fence
Reference: 88.2

Tyler Harriman - We are looking to put a 6 foot fence in our front yard, it will be about 12 feet back from the sidewalk. Last year we had a homeless man sleeping in our front yard and we have two daughters that are 2 and 3 and a third on the way. We wanted to come and see if we could get it approved, we didn't want to do the 4 feet and then later wish we had asked for the 6.

Mr. Carter - For the board, I did receive one call with an email that had a concern with visibility going in and out of said properties along Granville St. I believe said caller did not realize there would be a 12 foot setback from the front on the fence.

Deborah Hibler - I live directly across from the property, I didn't know it was 12 foot back, but still, is it like the fence that is around your back yard, where it's non decorative? Usually when you see a 6 foot fence across in front of a rather nice house you wonder why, I understand about the homeless person, I didn't not realize you had a problem with that of course. With the houses in that area people are working very hard to re-do them, I know I have, and their lawns are lovely and it just seems like 6 foot might be kind of an eyesore as far as property values. I understand the concern with the children, but 6 foot seems a little high. My house does sit back from the road like theirs does and it just seems a bit high.

Citizen - I had a question. I wondered what was the purpose of the fence.

Mr. Harriman - Our kids come out that door, our main door is on the side of the house and we didn't want any access to the road.

Citizen - I was wondering what materials because that is a historic house and that neighborhood that we are trying so hard to protect, I live on the corner of Granville and Saratoga, so I'm your neighbor and I've never met you, I'm sorry about that, I was wondering about the materials.

Mr. Harriman - We were going with just 6 foot cedar pickets.

Mr. Layman - I've got to tell you I'm not wild about a wood fence in the front yard period, whether it's 6 foot or 4 foot. If you would talk about like an iron, something that was considered decorative, we might be able to talk about it.

Mr. Harriman - Is that like chain link?

Mr. Layman - No, not chain link, something like wrought iron. We granted one a couple months ago and I regret it every time I drive by it. So, do you have a plan B?

Mr. Harriman - Plan B is just the 4 foot, it would probably still be wood. We aren't trying to make it an eyesore or anything, but we have a yard that goes all the way around the house, so we were just hoping to make it so the kids could run around the whole property, right now they can just go in the back.

Mr. Layman - If you put a 4 foot fence up there is jurisdiction so, in an attempt to jurisdiction, an idea that's been floated would be to have the leading edge here. If he puts a 4 foot fence up we don't have any jurisdiction he can take it all the way out, what we're offering is to let him put it up to here because this house could have a fence to here.

Motion to deny, second, motion passed 4-0

APPLICATION BZA-23-21

Applicant: Northpoint Ohio

Owner: Tim Murphy (Brothers Masonry)

Location: 274 N. Cedar St.

Project: Commercial Building

Reference: 54.8

Phil Claggett, Northpoint Ohio, 19 N. 4th Street - I'm here on behalf of Tim Murphy Brothers masonry, requesting a side and rear yard setback variance, side yard setback requires 25 feet we are requesting it reduced to 12 feet, rear yard required is 40 feet and we are requesting it reduced to 35 feet. We are building a new office/shop on the corner of Cedar and Garfield.

Tony and Debbie Pritts, 272 Cedar Street - Mr. Murphy spoke to my husband a couple times about the project and we don't have a problem with it, what was there before was pretty bad and we appreciate you fixing it up and all that. I'm trying to think about where the house was that was there before where you're talking about the side, the 12 feet. It seems to me like the house that sat there was closer than 12 feet.

Mr. Claggett - It was 6 feet.

Mrs. Pritts - Yes because I know it was probably during the zero lot line era.

Mr. Claggett - So this will be double what it was.

Mr. Carter - The old house was 8 feet off the line.

Mrs. Pritts - Oh, I know another thing I was going to ask was, is there going to be a business, are you running a business out of there?

Mr. Murphy - A masonry business.

Mrs. Pritts - Sounds great.

Motion to approve, second

Mr. Murphy - We're going to ask for another variance to make it 40% instead of 35%, was that part of this hearing.

Mr. Carter - You probably should. The footprint can't be more than 35% and he wanted to take it to 40% of the density requirement.

Mr. Layman - How about we just approve the site plan that was submitted, would that take care of it?

Mr. Claggett - Yes, it was 4,200 sq ft.

Mr. Layman - What you submitted was 4,200 sq. ft., so that's 60x70.

Motion passed 4-0

APPLICATION BZA-23-22

Applicant: Jeanne Phillips

Owner: Jeanne Phillips

Location: 2127 Morgan Run

Project: Shed

Reference: 86.3.1

Jeanne Phillips - Steve Bero and I are co-owners of the property and this is concerning a 12x20 storage shed that I received a notice warning that the shed is in the front yard and I had a conversation, I think Mr. Carter remembers me, I was in to take care of things, basically we are on a corner. Morgan Run runs around our house also, so it's on the corner of Morgan Run and Morgan Run because it winds around and it had a comment on the warning there's a shed in the front yard and it's also referred to as a garage. It does have an overhead door on it, we don't use it as a garage, we use it as a place to put Steve's tractor and some bicycles and lawn furniture and basically what people put in a storage shed and it's about 10 feet, we have a fence that goes around the perimeter of our house and it's about 10 feet from that and 10 feet from the rear of the property. I always considered that the side yard, we bought that as one lot. It's kind of an odd lot so to speak, most of the lots out there are ¼ acre and this one is like 1/3, as it got down to the corner it's just a little extra on the corner lot there.

Steve Bero - It's already there.

Ms. Phillips - I did get a building permit.

Steve Bero - It might have been my fault because it wasn't built on site, we didn't know that and we know that now. It's there and you know I have

a 570 John Deere yard tractor I keep in it, that's why I got a garage door. We had two options, a side door or garage door, side door you can just park it in the middle, the garage door you can park it one the end and have more room. So I just want to mention that.

Ms. Phillips - We did speak with the neighbors and of course, it doesn't appear that any of our neighbors are here, they pretty much are okay with it. Everyone out there is pretty friendly and most people don't really want to get involved. I'll be honest with you my co-worker had one of these meetings and I didn't go to his meeting because I didn't think it was necessary. Mr. Carter, I did notify Mr. Murphy.

Mr. Carter - Mr. Murphy did call me and say he was going to decline comment. His opinion was that since he is selling his house his opinion shouldn't really carry weight.

Ms. Phillips - I'm okay with that, but nice gentleman and I appreciate your help when I was in here.

Mr. Layman - I'm pretty sure if you would've come to us first, we would've said no. You've invested money and we're sensitive to that.

Ms. Phillips - And I apologize for that, but I didn't.

Mr. Layman - You're not the only people, you don't know. There are a lot of rules. Can you move it back at all?

Mr. Bero - If we have to. You'd have to get a crane, it would cost more money, we've got it settled right in there, it's been there a year.

Mr. Layman - It's not on a foundation is it?

Ms. Phillips - Not a concrete foundation, it's on limestone. When you say move it back, you mean to the back of the yard?

Mr. Layman - Like I said, if you hadn't done it, we wouldn't approve it. I'm wondering if you could push the leading edge back to the leading edge of the house next door.

Ms. Phillips - Request to table this.

Motion to table, second, passed 4-0

Mr. Carter - you are in an active appeal since this has been tabled so they can't come out and fine you.

THE NEXT SCHEDULED BOARD OF ZONING APPEALS MEETING WILL BE HELD ON THURSDAY, June 22, 2023, 5:30 P.M. THE DEADLINE FOR AGENDA ITEM SUBMITTAL IS June 1, 2023, 4:30PM.

5. ADJOURNMENT

Chairman, Board of Zoning Appeals

Secretary, Board of Zoning Appeals