

**MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD AT THE
GREENFIELD CITY HALL ON THURSDAY, JANUARY 23, 2025**

1. The meeting was called to order by Chairperson Mike Braswell at 5:33 p.m.

ROLL CALL:	Mike Braswell (chair)	Present
	Donald Reid	Present
	Kevin Thomas	Present
	Stephanie Kosmeder	Excused
	Paul Haggas	Present at 5:40pm
	Amanda Henderson (alt)	Present
	Christopher Porterfield (alt)	Present

ALSO PRESENT: Gina Vlach – City Planner
Braden Derrrow – 6800 W. Edgerton Ave.
Rosalie Vermiglio – 6800 W. Edgerton Ave.
Marsha Hernandez – 3320 W. Lynndale Ave.

2. Approval of the minutes from the July 25, 2024 meeting.

Motion by Ms. Henderson, seconded by Mr. Thomas, to approve the minutes from the July 25, 2024 meeting. Motion carried unanimously.

3. Zoning Special Exception petition for construction of a fence in the front yard, to be located at 6800 W. Edgerton Ave., submitted by Brent Crubaugh, d/b/a A-1 Fence Company. (Tax Key No. 617-0008-000)

The applicant, Brent Crubaugh, is requesting a variance to construct a fence in the front yard of the property located at 6800 W. Edgerton Ave. The proposed fence is a 4ft high cedar dogeared solid fence. The location of the fence would extend south, from the existing 6ft high fence along the western property line south, continue along the southern property line, across the existing driveway, and return north where it will terminate at southeast corner of the primary structure. A gate would be constructed across the driveway to provide vehicular access to the property. No details about the gate have been submitted at this time. The property is zoned R2 Single-Family Residential Conservation District.

The requested waiver contains two components. First, the requested waiver is regarding the height of the fence in the front yard. Code permits decorative fencing in the front yard at a maximum height of three (3) feet whereas the proposed fence is four (4) feet in height. Second, the requested waiver is regarding the openness of the fence in the front yard. Code permits decorative fencing, which is more than seventy-five (75) percent open in the front yard whereas the proposed fence is solid.

Mr. Crubaugh has submitted the following narrative explanation for the variance request:

We are applying for a variance on height restrictions of fencing in the front yard for 6800 W Edgerton Ave. This is a corner lot with very high and steady traffic on both Edgerton and 68th. The specific ordinances would be section 21.04.0902 and section 21.04.0802 (D) 2b.

We would like to build a 4 ft high cedar dogeared solid fence along designated lines to block a child from potentially running into traffic. The child that lives in this house has a disability and has a documented flight risk/severe elopement without the capability to understand the risks associated with traffic etc.

The fence would not encroach on any visual setback from the corner of property. We understand that this is merely a deterrent to block the danger of this intersection, but feel that it is definitely needed. Even if this just buys a little piece of mind for the parents, who do their best to keep doors locked inside the house. We have provided documentation/pictures for you to reference.

Thank you for your time

Municipal Code speaks to fences in multiple places. Table 21.04.0902 details permitted obstructions in yards. Using this table, fences are permitted in the rear, side, and corner side yard but are not permitted in the front yard. Furthermore, Section 21.04.0802(D)2(b) states "Fences may not be within the front yard, except decorative fencing not exceeding a maximum height of three (3) feet, and creating a continuous enclosure, may be installed within the front yard areas in the residential districts. Chain-link fences shall not be allowed in the front yards of residential districts." Decorative fencing is defined in Section 21.02.0103 as "a fence, including gates, which is more than seventy-five (75) percent open and less than three (3) feet in height, such as split rail fences used for ornamental purposes. For purposes of this section, chain link and picket fences are not considered decorative fences."

Section 21.09.0209 of the Municipal Code states that, "No special exceptions shall be granted by the Zoning Board of Appeals unless it finds beyond a reasonable doubt that all the following facts and conditions exist:

1. Preservation of Intent.
 - a. No special exception shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No special exception shall permit a use in any district that is not a stated permitted use, accessory use, or special use in that particular district.
2. Exceptional Circumstances.
 - a. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the special exception would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.
3. Economic Hardship and Self-Imposed Hardship Not Grounds for Special Exception.
 - a. No special exception shall be granted solely based on economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of the special exception.
4. Preservation of Property Rights.

- a. The special exception must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
5. Absence of Detriment.
 - a. No special exception shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this Code or the public interest.
6. Additional Requirements in Floodland Districts.”

If a variance is granted for this application, Staff feels strongly that a precedence would be set, applying Fact #2 above, that if one exception is granted, more applications are to come. If this exception is granted, the City should consider modifying the Zoning Code regulation of fences for every residentially zoned property in the City. Currently, in no residentially zoned district in the City may a solid fence be constructed in the front yard. Further, in no residentially zoned district in the City may a fence 4ft in height be constructed in the front yard. Granting this exception would set a precedent for all residentially zoned properties in the City. Staff does not recommend approval of the proposed application/ variance request.

The applicant, Brent Crubaugh, was present to answer questions. The property owners, Braden Derrrow and Rosalie Vermiglio, were also present to answer any questions.

The property owners explained several of the concerns they have related to how the intersection near their home is controlled. Mr. Derrrow noted that the four-way stop signs were unique given the amount of traffic that travels along the two roads. Ms. Vermiglio stated that she had attempted to contact DPW about installing additional signage near that intersection but had not been successful.

Ms. Vermiglio stated that the biggest concern that she has with her son’s autism diagnosis is with elopement and explained how the elopement has gotten worse.

Chairperson Braswell asked for additional information about the plan for the gate. Mr. Crubaugh explained that the plan was to have a gate that extends across the extent of the driveway. He continued that it will have a steel frame on the property-side of the gate that will not be visible to others.

Mrs. Vlach explained that the ZBOA could deny the variance request but could still grant a reasonable accommodation for the fence. The difference, she explained, is that a variance is tied to the property and is granted based off of a property. In contrast, the reasonable accommodation, as required by federal law, is tied to the individual and should be the smallest change possible that still allows the disabled person adequate relief. Further, she explained that a variance would run with the land and would remain applicable to the property even after the individual in need of the accommodation no longer resided at that property. The reasonable accommodation would be recorded with the Register of Deeds.

Thomas Anick, 6836 W. Edgerton Ave., spoke against the variance request. Mr. Anick explained that he is the neighbor immediately to the west of the applicant and that he was against the fence being located along their shared property line. He stated that he did not feel that it would

enhance his property and did not understand why the fence needed to be located in that spot in order to accommodate the needs of the autistic individual residing at 6800 W. Edgerton Ave.

Denna Flemming, 6776 W. Edgerton Ave., spoke against the variance request. Ms. Flemming stated that she worried that allowing the fence in the front yard would negatively impact the residential character of the neighborhood. She also voiced her concern with the fence location being all the way to the sidewalk and wondered if a less obstructive accommodation could be considered.

Ms. Vermiglio asked for clarification on reasonable accommodations. Mrs. Vlach explained that a reasonable accommodation is the least deviance from the code that still provides adequate relief due to the disability. Mr. Haggas provided an example of his family member, who lives in a different municipality, who needed a ramp installed following an accident. His family member was given a reasonable accommodation to have the ramp installed in the rear of the home but not in the front of the home.

There was discussion regarding the location of the fence and potential conflicts with vision triangles. Further discussion was had regarding what other alternatives had been explored by the property owners.

Ms. Henderson asked if a solid, 4ft fence was necessary or if a different type of fence could provide the applicants adequate relief. Mr. Crubaugh stated that a picket fence could be an alternative.

Mrs. Vlach explained to that the Board that they could make two separate motions. One motion could be whether or not to approve the variance request and the other could deal exclusively with the reasonable accommodation. She confirmed that she spoke with the City attorney who confirmed that this approach was allowable. Mrs. Vlach again explained the difference between a variance and a reasonable accommodation. She asked the Board members if they had any questions about the information she had provided regarding the variance and reasonable accommodation, noting that this was not something that is typical for this Board. No clarifying questions were asked.

Chairperson Braswell voiced concern regarding the changes that had been discussed during the meeting and a lack of confidence for what a reasonable accommodation would look like in practice. Mr. Crubaugh stated that he could provide the board with an alternative that his company offers that was available on his website. Chairperson Braswell stated that he didn't feel that was his preferred approach. Mrs. Vlach offered an option where the Board could approve the height and openness and the applicant could work with Staff on the finer details when they applied for their fence permit.

Chairperson Braswell voiced concern regarding the gate and asked whether the gate will be manual. Mr. Crubaugh stated it would be manual. Mr. Haggas also voiced concern that the location of the fence along the sidewalk on W. Edgerton did not provide adequate space for an individual to fully pull off of Edgerton, get out of their car to open the gate, and then return to their car to fully pull in within the fenced in area, without creating a conflict on Edgerton. Mr. Crubaugh stated that the fence could be moved farther off of W. Edgerton Ave.

There was discussion regarding having the applicants reappear before the Zoning Board of Appeals the following month with more specific details of their request.

Mrs. Vlach explained again that they could deny the variance but still a reasonable accommodation could still be granted.

Motion by Chairperson Braswell, seconded by Mr. Thomas, to deny the Zoning Special Exception petition for construction of a fence in the front yard, to be located at 6800 W. Edgerton Ave., submitted by Brent Crubaugh, d/b/a A-1 Fence Company (Tax Key No. 617-0008-000). Motion carried unanimously.

Motion by Chairperson Braswell, seconded by Mr. Haggas, to table to discussion of a reasonable accommodation for construction of a fence in the front yard, to be located at 6800 W. Edgerton Ave. (Tax Key No. 617-0008-000) to a later meeting of the Zoning Board of Appeals. Motion carried unanimously.

4. **Zoning Special Exception petition for construction of a home addition in a side yard setback, to be located at 11528 W. Cold Spring Rd., submitted by Cristian and Courtney Garcia, owners. (Tax Key No. 566-9981-000).**

Application rescinded per the applicant.

5. **Zoning Special Exception petition for construction of a fence in the front yard, to be located at 3320 W. Lynndale Ave., submitted by Marsha Hernandez, owner. (Tax Key No. 553-0407-000)**

The owner, Marsha Hernandez, is requesting a variance to construct a solid fence in the front yard of the property located at 3320 W. Lynndale Ave. The proposed fence is 6ft in height and solid. The fence begins at the garage, extends over a concrete walkway towards W. Lynndale Ave., continues parallel to the street, and terminates at the front post of the porch. Two gates will be constructed as part of this project. One gate would provide access from the driveway to concrete walkway that heads toward the primary structure. A second gate would be constructed between the post of the porch and the corner of the primary structure. The property is zoned R4 Single-Family and Two-Family Residential Conservation District.

The requested waiver contains two components. First, the requested waiver is regarding the height of the fence in the front yard. Code permits decorative fencing in the front yard at a maximum height of three (3) feet whereas the proposed fence is six (6) feet in height. Second, the requested waiver is regarding the openness of the fence in the front yard. Code permits decorative fencing, which is more than seventy-five (75) percent open in the front yard whereas the proposed fence is solid.

Ms. Hernandez has submitted the following narrative explanation for the variance request:

I am writing to seek a fence variance for my single-family home at 3320 W. Lynndale Ave, for a 6ft foot privacy fence to be ran from the side of my covered front porch structure to the garage on the back of the lot.

Ever since owning my home for the past 18yrs, I have always wanted to install a fence for the added security to my property, a safe area for my children, my large dogs to run, play & protect the entryways of our home, and to increase the functionality and aesthetics of the property as well. Our property is in an older area of Greenfield and I have always defined my porch as part of the structure of my home. But the City of Greenfield is defining it as the front yard due to the R4 minimum setback requirement of 25ft.

My home has a unique and irregular lot due to the lot lines which does not give me many options for installing a 6ft fence since no useable rear yard, and at the curve of an alleyway. It was built in the late 1930's. My covered front porch is part of the original structure of my home and even provides front support to the upper dormer on the second floor (see exhibits D, E). It shares the same roof and siding as the rest of the home as well and has beat board along the inside ceiling which also supports that it was constructed with the original build of the home almost 91yrs ago. It would be reasonable to consider this is not my front yard. R4 zoning indicates that front setback should be a minimum of 25ft, rear setback a minimum of 25ft, and then length of lot overall a minimum of 100ft. As you can see from my survey, my property does not meet these minimum requirements and is non-confirming. I have no rear yard, just a side and front yard. I did discuss this fence with multiple neighbors and friends, and everyone thought the same as I did, the front of my home would include the covered porch structure. I was informed by the city planners Luke & Gina that the reason I need to apply for the variance is due to my front yard setback of 25.35ft which does not include my entire front porch. But there are other properties also on my street that are non-confirming to these min setback requirements as well and even closer to the city line than my fence/porch. If you refer to exhibit C, this includes my neighbors home next door, since their porch is heated/walls/windows and would be considered part of their house per the zoning definitions, it is 3 feet closer to the city line than my fence/porch area so the neighbor's home is non-conforming to the R4 requirements also and further out than my own home. My fence is also located in the middle of my lot, not near any lot lines, and is posing no negative effects upon my neighbors or community. I have included letters of support from my neighbors facing the front and sides of my property. And there are 2 appraisals attached, one from 2023 showing a value of \$265,000, and now one from Dec 2024 showing the value at \$306,400 to further support this.

This request is for the additional 7.65ft needed from the setback to the end of the supportive porch structure on our home that we have never considered our front yard so we may keep our fence in place to have more functionality and enjoyment out of our property's unique layout. I hope you agree that my request is fair and has produced an aesthetically proper addition to our home and an enhancement to my neighborhood as well.

Should you have any questions, please do not hesitate to contact me at 608-234-0068. I thank you for your thoughtful consideration of this request.

*Sincerely,
Marsha Hernandez*

Municipal Code speaks to fences in multiple places. Table 21.04.0902 details permitted obstructions in yards. Using this table, fences are permitted in the rear, side, and corner side yard but are not permitted in the front yard. Furthermore, Section 21.04.0802(D)2(b) states "Fences may not be within the front yard, except decorative fencing not exceeding a maximum

height of three (3) feet, and creating a continuous enclosure, may be installed within the front yard areas in the residential districts. Chain-link fences shall not be allowed in the front yards of residential districts.” Decorative fencing is defined in Section 21.02.0103 as “a fence, including gates, which is more than seventy-five (75) percent open and less than three (3) feet in height, such as split rail fences used for ornamental purposes. For purposes of this section, chain link and picket fences are not considered decorative fences.”

One element of the narrative, provided by the applicant, speaks to what is considered a front yard and how that should be interpreted to apply to her property. This is an important determination with this variance request because of the difference between how fences are regulated in the front yard setback. The following details the process taken by staff in making the determination that the fence is located within the front yard.

Staff utilized Section 21.02.0103 to review the definitions of the key terms. They are as follows (underlining and bolding added by staff for emphasis):

Yard. An open space on the same zoning lot with a principal building or group of buildings, which is unoccupied and unobstructed from its lowest level upward, except as otherwise permitted in this Code, which extends along a lot line and at right angles thereto to a depth or width specified in the yard regulations for the district in which the zoning lot is located.

Yard, front. A yard extending along the full length of the front lot line between the side lot lines. That yard which is obviously the front due to the prevailing custom of the other buildings in the area or in the City. Where such front yard is not obviously evident to the Zoning Administrator, the Zoning Administrator shall determine the front yard.

Porch. A covered area adjoining an entrance to a building and usually having a separate roof.

Floor area, ground. The lot area covered by a principal building, measured at grade from the exterior faces of the exterior walls, but excluding open porches or terraces, garages, or carports.

Living area. That area of a dwelling unit measured from the outside of the exterior walls; including utility rooms, foyers, interior stairwells, hallways, closets, columns and walls and finished half-basements or finished portions of half-basements; but excluding basements and unfinished half-basements, or unfinished portions of half-basements, open porches, breezeways, garages, and other spaces not used frequently or during extended periods for living, eating, or sleeping purposes. The unit of measurement of living area shall be in square feet.

Staff also reviewed Section 21.04.0902 as it relates to the regulation of porches. Based on this section of Code, porches with roofs are regulated as a projection onto the primary dwelling of the property. Important to the question at hand, porches with roofs are permitted in the front yard of a property; because porches with roofs are permitted in the front yard, they are not considered the front extent of the primary dwelling on the property. Simply, the porch **is in** the front yard and does not delineate the extent of the front yard.

To illustrate the determination of the location of the front yard, the image to the right was created by Staff. The colors were added to the survey provided by the applicant and their fence

contractor. The green portion of the property is the front yard and the red portion of the property represents the rear and side yards. The red box has been superimposed on the image to demarcate the portion of the proposed fence that is in the front yard and is not in compliance with City code.

Staff would also like to note that the survey submitted as part of this application is not an official survey and is not completely accurate to what is present on the property. Specifically, the garage addition is roughly added to the survey and the concrete pathway leading between the driveway and primary structure has been moved to a different location. Please see below for the survey that was submitted as part of the construction of the new garage in 2022.

Section 21.09.0209 of the Municipal Code states that, "No special exceptions shall be granted by the Zoning Board of Appeals unless it finds beyond a reasonable doubt that all the following facts and conditions exist:

1. Preservation of Intent.
 - a. No special exception shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No special exception shall permit a use in any district that is not a stated permitted use, accessory use, or special use in that particular district.
2. Exceptional Circumstances.
 - a. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same district and the granting of the special exception would not be of so general or recurrent nature as to suggest that the Zoning Code should be changed.
3. Economic Hardship and Self-Imposed Hardship Not Grounds for Special Exception.
 - a. No special exception shall be granted solely based on economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of the special exception.
4. Preservation of Property Rights.
 - a. The special exception must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
5. Absence of Detriment.
 - a. No special exception shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this Code or the public interest.
6. Additional Requirements in Floodland Districts."

If a variance is granted for this application, Staff feels strongly that a precedence would be set, applying Fact #2 above, that if one exception is granted, more applications are to come. If this exception is granted, the City should consider modifying the Zoning Code regulation of fences for every residentially zoned property in the City. Currently, in no residentially zoned district in the City may a solid fence be constructed in the front yard. Further, in no residentially zoned district in the City may a fence 6ft in height be constructed in the front yard. Granting this exception would set a precedent for all residentially zoned properties in the City. Staff does not recommend approval of the proposed application/ variance request.

Additionally, Staff feels strongly that a precedent would be set, applying Fact #3 above.

Precedence – June 27, 2024

The Zoning Board of Appeals voted 3-1 to deny the petition for the construction of an 8ft tall fence at the property located at 4199 S. 121st St. As part of the discussion during that meeting, a member of the Board asked the applicant if the home had an 8ft fence when she purchased the property. The owner confirmed that, when they purchased the property, only a 6ft fence was present. The member then stated that they felt that the petition fell within the self-imposed hardship facts and conditions given that the house was purchased knowing what was visible from their property since a 6ft fence was already present on the property. The member noted that self-imposed hardships are not grounds for special exceptions.

The applicant of the current request mentioned in their narrative that the location of the fence is necessary given their irregular lot shape and lack of a usable rear yard. While what is considered usable could be up for debate, recent decisions by the property owner have drastically reduced the available area in the rear and side of their property. In 2022, the property owner demolished their existing 316 sq. ft. garage and replaced it with a new 720 sq. ft. garage. The additional 404 sq. ft. of garage space reduced the amount of unused space in the rear and side yards of the property.

The location of the garage also impacts the amount of space in the rear and side yard. The applicant could have chosen to build their new garage at the front yard setback (25ft) and reserved space behind the garage. Instead, the location of the new garage prioritized retention of driveway area. Additionally, the owner has chosen to not remove the shed in the rear of the property despite having the new larger garage. The difference between the 316 sq. ft. garage and the 720 sq. ft. garage can be seen in the comparison below.

Municipal Code Section 21.09.0209(C) clearly states that self-imposed hardships shall not be considered as grounds for the granting of a special exception. In the case of the space available for the enjoyment of the property, the owner has made specific choices that have resulted in the limited use of their property. For this reason, Staff recommends that the variance be denied.

The applicant and property owner, Marsha Hernandez, was present to answer questions.

Ms. Hernandez spoke regarding her application. She explained her interpretation of what she felt was her front yard and the reasoning she used to reach her conclusion. She noted that she did not believe that the situation was self-imposed. She stated that her fence contractor did not pull the required permits, though, she was not aware of this fact until after the fence was partially installed and a stop-work order was issued.

Mrs. Vlach stated that the first question that the Zoning Board of Appeals needed to answer was whether the determination of the front yard was made in error and that discussion of the fence should occur after they had answered that question.

Ms. Henderson asked what information was provided regarding the determination concerning if the front porch was load bearing. Mrs. Vlach stated that the burden is always on the applicant to provide that information and no information was provided supporting that claim.

Motion by Chairperson Braswell, seconded by Mr. Thomas, that the City's determination of the front yard was not made in error. Motion carried unanimously.

Discussion was had about the construction of the fence and the damage that removing it would cause to the concrete.

Aidimer Hichez, 3330 W. Lynndale Ave., spoke in favor of the variance. She stated that she found the fence to be aesthetically appealing.

Chairperson Braswell stated that, because the fence was already installed, he felt that the Board should look for alternatives to requiring the fence to be fully removed. Ms. Hernandez stated that anything less than what was installed would not be desirable and would limit the usefulness of the fence. Ms. Hernandez stated that the fence had increased the appraised value of her home. Mrs. Vlach reminded the board that financial hardship cannot be a reason for granting a variance.

Mr. Porterfield asked if the Zoning Administrator could make a new determination if new information is provided by the applicant. Mrs. Vlach confirmed that she, as the Zoning Administrator, would be responsible for making that determination.

Discussion was had concerning amendments to the installed fence. Mrs. Vlach stated that, in conversations she had with the City Attorney, an important element of fences is the front yard to consider is the intent of the Common Council when they initially approved the ordinance for decorative fences. Because fences in the front yard are only permitted to be three feet in height and must be seventy-five percent open, Mrs. Vlach and the City Attorney felt that the intent was to not have fences in the front yard be functional; that the intent was for them to be decorative. As such, she continued, having fences that varied from that requirement also represented a variance on the intent of the Common Council's decision to only have decorative fences in the front yard.

Ms. Hernandez stated that the request for the six-foot height was due to their large dog.

Discussion was had regarding potential alterations to the fence in the front yard.

Ms. Hernandez asked if she ever had additional evidence if it could be reconsidered. Chairperson Braswell stated that she could.

There was discussion regarding how much time Ms. Hernandez would have to reappear before the Zoning Board of Appeals with an updated application. The Board determined that she would need to appear before the Zoning Board of Appeals within six months or the fence will need to be removed.

Motion by Mr. Haggas, seconded by Chairperson Braswell, to deny the Zoning Special Exception petition for construction of a fence in the front yard, to be located at 3320 W. Lynndale Ave., submitted by Marsha Hernandez, owner. (Tax Key No. 553-0407-000). On a roll call vote, the motion passed 3-1, with Mr. Reid opposed and Chairperson Braswell, Mr. Thomas, and Mr. Haggas in favor.

6. Adjournment

Motion by Chairperson Braswell, seconded by Ms. Henderson, to adjourn the meeting at 7:52 p.m. Motion carried unanimously.

Respectfully Submitted,

Gina Vlach
City Planner

Distributed February 14, 2025