

Members Present: Lisa Carpenter
Tim Cron
Reece Timbrook, Chairman

Members Absent: Tim Schneider

Others Present: Nia Holt, Community Development Director
Josh Rauch, City Manager
Dalma Grandjean, Law Director

CALL TO ORDER: The Board of Zoning Appeals meeting was called to order at 6:30 p.m.

ROLL CALL: Mrs. Carpenter, present; Mr. Cron, present; Mr. Schneider, absent; and Mr. Timbrook, present. Chairman Timbrook excused Mr. Schneider.

APPROVAL OF MEETING MINUTES: Having no comments or corrections, the minutes of October 24, 2023, stand approved.

Chairman Timbrook stated that speakers need to speak directly into the microphone when making public comments. He reviewed the rules in place for the meeting.

PUBLIC HEARINGS/REVIEW:

- a. **BZA Case #23-0008 – 4990 Old Troy Pike (Parcel ID# I39 00802 9001) – R-3,**
Medium Density Residential District.
A variance from UDO Section 1115.01(E)(3)(c) to allow an increase in the permitted sign area for an electronic message center of a nonconforming sign.

Ms. Holt took the oath to give sworn testimony. She stated this is a variance request to allow an increase in the sign face area for an electronic message center of a nonconforming sign. The requirement is a 12 sq. ft. maximum; the request is for a 28 sq. ft. increase, a 233.3 percent increase. She presented an aerial map and site plan of the site and stated there is an existing sign on the property. The property is in a residential district and that is one of the reasons the sign that is there is nonconforming. She presented the site plan and a rendering of the proposed sign. She presented site photos of the subject sign and views of the sign from different directions. Based on the code, she stated they have to recommend denial because it does not meet the standards for a variance. Staff finds that the requested variance to allow an increase in the permitted sign area is not adequately justified and does not meet the standards for approval. Staff recommends denial of the requested variance as it is a substantial variance, the requested variance will alter the character of the immediate area, the current design of the proposed sign is not the minimum necessary to afford relief to the applicant, and the spirit and intent behind the zoning code would not be observed. She reviewed the criteria for granting a variance.

Chairman Timbrook stated she indicated that it would alter the character of the neighborhood, and asked if it was because it is an LED sign in a residential neighborhood or if it was because it is a church in a residential neighborhood and is zoned residential. Ms. Holt stated there is a

Turkish Community Center across the street that is a not-for-profit and does not have that type of sign. Mrs. Carpenter asked if the sign would be in the same location. Ms. Holt confirmed it would. Mrs. Carpenter asked if the sign would be the same height. The picture shows the base with two columns and the current one has only one. Ms. Holt stated the applicant would be able to answer that question and is present tonight. Chairman Timbrook stated that any LED sign in a neighborhood is prohibited by the code. There is a difference between it being across from residential and being residentially zoned. Discussion was held on businesses nearby.

Chairman Timbrook opened the public hearing at 6:42 p.m. Mr. Ray Viers, the applicant, took the oath to give sworn testimony. He stated they are a church and have been there for 50+ years. He stated it is zoned residential but is more commercial. The current sign was built and approved by the board in 2003. It was larger than the zoning allowed back then. They are trying to replace the existing sign. They are unable to get a ballast for it to light it up at night. It also provides some safety issues with trying to remove letters individually. They will use the same stand sign, set up, and height, and the same casing that is already there. The current sign is 7' by 10', and the new sign is 5' by 8', so it will be smaller than the current sign. He added that the sign will automatically dim at night. There are additional features where they can dim it even more if there is an issue. One side of them has an apartment complex and the other side has a storage facility, across the street is a cemetery. There are a few houses around. They did not receive any complaints or concerns from citizens. Mrs. Carpenter asked if the entire sign would be LED. Mr. Viers stated it would be. The top will be LED and static, and the bottom will have LED rolling messages. He pointed out other signs like the one they are proposing that are in Riverside. Mr. Cron asked what was the total height from ground to top. Mr. Viers stated that the new sign will be on the current post and be 5'x 8'. He did not have the total height from ground to top.

Chairman Timbrook stated that one of the criteria was whether their predicament could be feasibly obviated with a variance. Mr. Viers stated it is for drivers coming down the road to see an uplifting message or promote service times and events at the church. They will use it for community outreach as they have different festivals and programs that bring in Riverside residents. They also have a food pantry they wish to advertise. They are currently limited on what they can do with static letters, and it is not lit up at night, so they are stuck.

Chairman Timbrook closed the public hearing at 6:48 p.m.

Mrs. Carpenter stated she did not see a problem with the new sign. The current sign is barely visible. It is also set back far enough off the road. Discussion on the sign continued with the board. Mr. Cron stated that churches can be built in any zone; there are also businesses down the road even though a church is not a business.

Chairman Timbrook moved, seconded by Mr. Cron, to approve the requested variance without conditions for Case #23-0008, 4990 Old Troy Pike, based on the staff report, evidence, and testimony heard today the applicant has met standards 1, 3, 4, 6, and 7. Roll call went as follows: Mr. Timbrook, yes; Mr. Cron, yes; and Mrs. Carpenter, yes. **Motion carried.**

b. BZA Case #23-0009 – Glendean Avenue (Unaddressed Parcel) (Parcel ID# I39 00110 0007) – R-4, Multi-Family Residential District.

Variations from UDO Section 1107.05(E)(1) and Table 1113.07-1 to allow a reduction front yard setback and landscape buffer yard in the rear.

Ms. Holt stated that there are two variances associated with this case. The first is for a 25' encroachment on the required 50' front yard setback, a request for a 50 percent reduction. The second is for the elimination of the rear yard setback from the required 25' landscape buffer yard, a request for a 100 percent reduction. She presented an aerial map of the 10 acres that a proposed townhome complex would be built. She presented the site plan pointing out variance #1 and variance #2. She added there have been changes to this since they received their packet. She presented site photos and photos of adjacent properties indicating the front setback and the rear landscape buffer yard. Staff finds the requested variance to allow a reduction in the required front yard setback to be adequately justified and meet the standards for approval. Staff recommends approval of the requested variances as the applicant has requested the minimum variance necessary for relief from their predicament, and the spirit and intent behind the zoning code would be observed. She reviewed the criteria for granting a variance.

Chairman Timbrook asked if it is just along Glendean that the front setback is needed. Ms. Holt replied yes. She stated the apartments on Glendean have a 30' setback. Discussion was held on how the back of the complex will face Glendean, but the setback is considered a front yard setback from the road. The developer can discuss the landscaping needed.

Chairman Timbrook stated that they are only voting on whether or not to approve a variance for the front yard setback and landscape buffer in the rear and side yards.

Chairman Timbrook opened the public hearing at 7:03 p.m. He invited the applicant to speak on the request. Mr. Lance Oakes, applicant, 8534 Yankee Street, Dayton, OH, took the oath to give sworn testimony. He stated Ms. Holt did a great job of explaining the information. He stated as it relates to the landscape buffer, the four acres to the back are heavily wooded. He has no plans to remove trees on his property back there nor within the 25' additional that comes off the rear. Any homes that back up to that will not see the site once it is built out. As it relates to the front yard setback. The original plan was 118 units; it has since been cut down to 99. The reason for the request is due to the sizes and depth of the units. He plans to landscape and plant trees and potentially put mounding up there if the space is allowed to be maintained by the HOA. This will allow them to get as much screening from Glendean and make it aesthetically appealing to everyone on that street. That is the plan. He is happy to hear any comments and answer questions. Chairman Timbrook asked if he is unable to get the variance off of Glendean, and has to comply with the 50', so 25' further back to build, could he explain the hardship? Mr. Oakes stated it comes down to economics. There are 12 units there that would be impacted. He may have to swing the road around a bit to get those back, but overall, he does not feel it will hurting the view of Glendean. He believes he will be improving the aesthetic corridor of that road with the development. Chairman Timbrook asked the same question regarding the 25' buffer for the

rear lot. Mr. Oakes stated it will shrink it; that one is more common sense as he has landscaping back there and is not going to cut down four acres of trees.

Mr. Frank Smith, 9703 Byesville Blvd., Riverside, OH, took an oath to give sworn testimony to the best of his ability. He stated he was against this, and they do not need any more down there. It doesn't matter how many buffers are there, it is a bad water table. Anything they do down there will give them problems in the neighborhood, water, whatever. It will not help them at all.

Mr. Jim Wright, 4552 Byesville Blvd., Riverside, OH, took the oath to give sworn testimony. Mr. Wright stated he has lived in the area for 62 years and agrees with Mr. Smith that they do not need any more potential riffraff in the area. His concern with the reduction of the frontage and back will create less drainage for the water and where the water will go. The sewers run pretty full down there. He asked if a 100-year study had been done on the effect of the drainage through a core of engineers. He doesn't want to see something happen down there and then can't sell them and ends up going to public housing. He is against it.

Mr. Ben Newell, 630 Glendean Avenue, Riverside, OH, took the oath to give sworn testimony. Mr. Newell stated he lives across the street from the proposed building site; he has four acres across from this. He stated he appreciated their common sense. He stated they are in a neighborhood and the Yorktown apartments down the street are not in their neighborhood. They are residential homes, not multi-family homes, which goes against item number one – does it change the characteristics of the neighborhood? The last to change the zoning of this changed the characteristics of his neighborhood. They spoke against this before with a different group on the BZA. They downsized this to 10 acres; it was 14 before. Before, Todd Pultz was doing 108 units on 14 acres and now he is doing 108 units on 10 acres. They are running out of room and want to take it from his yard. The apartments down the street are set back and are not in their neighborhood. Whatever is going to be built here will be up on the street. All the homes on the street are not less than 50' from the street. His home is 160' from the street. This is a big change in the characteristics in the neighborhood. They have a country-style setting in their neighborhood. They have neighbors that invest in their homes. This is a kick in the gut. It will be a big difference and a big change in the characteristics of the neighborhood.

Mr. Doug Bowen, 487 Glendean Avenue, Riverside, Ohio, took the oath to give sworn testimony. He stated that Mr. Newell lives up the hill and they live down the hill. So many people go through there that they do not need anymore. The people with the big houses coming up that way don't want that going in there. It is people wanting to make money and go someplace to do this and they will go somewhere else. Everybody in the plat has pretty much always been there and is there now. His house is near the creek. They do not want anything going down there. They do not need this. Everybody wants to get more money; that might be the reason they want to do it. They don't want to have it. He has lived there for 80 years.

Ms. Linda Kauppila, 4760 Fairpark, Riverside, OH, took the oath to give sworn testimony. She stated she does not know what they are building. She heard before they were going to build

townhomes but that went away. She wants to know what is to be built, how many, is it subsidized housing, and what is going to happen on their street. She stated that if they do build these that with the crime rate, they better increase the police department because it has been really bad lately. She stated if it is going to increase crime, she may be neutral, but maybe she is not. She wants to know when it will all start. Ms. Holt stated it has not gone to planning commission yet.

Ms. Dawne Williams, 755 Glendean Avenue, Riverside, OH, took the oath to give sworn testimony. She stated that she lives at the residence that is the property to the north of the proposed site. She stated that when they look at the plans for the site the line on their property wipes out her central air unit. She asked if she was to give up her home, her central air, and that they are not trying to back the project off the back of her home. She stated there should be 20' or 50' from her home. She does not want people's kids to run beside her house tearing up her central air unit and her property that she works hard on. She added that they have meth heads already from Radio Road and at the apartments on the corner of Springfield and Glendean. She stated there is drug traffic up and down all day and all night. They all have to lock their properties up like Fort Knox, now. She commented that while they have CCWs, they can't use them or protect their property. She stated that the thief has more rights than the property owners. She stated she proposed to the last buyer a split on a privacy fence down her side of the property but was told that they could not afford that. She commented that they can't afford to put up a privacy fence, but they can afford to build all these properties. She is against it.

Ms. Jennifer Bullock, Glendean Avenue (no house number given), Riverside, OH, took the oath to give sworn testimony. She stated she lives directly across from the proposed site. She stated she feels that they are back to what they went through the first time and the Riverside residents aren't being heard. She stated they won't have any answers until they vote, and she feels like she knows how that will go. She said to the builder that she did not believe he had checked the neighborhood. The area for the townhomes she assumed is in the upwards of \$100,000 homes based on what they were told by the last builder. She stated that crime has increased. In the last two weeks, one of her long-time neighbors was frightened nearly to death due to drug activity and people in the neighborhood who continue to bring the drug activity in. She stated the police department was not doing anything and told them to just give it time and that this house would be closed up. All it is doing is pushing these drug users into other homes in the neighborhood. She stated the other day two meth users stopped by her recycle can and dug through it as she stood at her window and watched. They also dropped things off to the side and did not pick it up and continued down the street to the next neighbor. She asked if people who want to buy \$200,000 townhomes want to live in this neighborhood. She would support Riverside in showing them 100 contracts from supposed buyers who know the neighborhood and are committed to buying in that neighborhood and maybe this could change their minds. She thinks it will end up being subsidized, eventually, but people will learn what that neighborhood is about and move out, and then where will that leave them? She is also concerned that there are no sidewalks. These people will walk through their yards, go to the school, and cross through. They don't want it or need it. Other rentals need to be filled in Riverside.

Mr. Oakes stated he is working with the city as it relates to drainage as is aware that it is an issue on that street. He stated he was going to make it better, but that he was not going to solve it. He is confident in saying he will make it better than it is today. Chairman Timbrook asked about the variances and if he is looking at something with the city on the water drainage. Mr. Oakes stated that it is the adjacent city-owned parcel. He stated it would get better, but he couldn't solve the problem. He stated the units will be two-story, 3-bedroom, 2.5-bath, townhomes that will be market rate and not subsidized governmental housing. Based on today's rate, they will be priced at the low \$300,000 per unit. They will be 20' by 57' and around 1,400 sq. ft. He added that he has visited the site, and it is a quiet road and neighborhood. He thinks there is a demand and a market for that in the area and to do it nicely. From what he has heard tonight, this may warrant him putting up a fence around his property. He appreciates the feedback and ideas. He is here to be a good neighbor not only to the city but to the residents also. He wants to make sure what he does makes their street better, their home values rise, and a better place to live. This is what he has done in most of the communities where he has developed. He stated that they can't build anything under \$250,000 these days. He understands he is hitting a higher price point than what is in that market today. For him to hit that, he needs to make sure it looks good. Discussion was held on the project, and this still needs to go before the planning commission. Mr. Rauch stated their task this evening is just to decide on the two variances, one for the front setback and one for the rear setback. A lot of the comments are real concerns, but they are concerns that will be addressed through the planning commission and the staff development process. Those concerns have no bearing on the two decisions to be made this evening. That is the next step.

Chairman Timbrook closed the public hearing at 7:31 p.m.

Chairman Timbrook stated that they are only concerned with the setback in the front and the back. The back is a non-issue as there are four acres that woods have blocked off behind it. On the front, they're asking for 25' into the 50' and they have had several examples up the road with the same thing. He stated they would lose a lot of the structures that they want to put toward Glendean Ave. He finds no issue with that. Mr. Cron agreed as it is similar to the other ones.

Chairman Timbrook moved, seconded by Mr. Cron, to approve BZA Case #23-0009, Glendean Avenue Parcel (unaddressed), front yard setback variance request based on the staff report, evidence, and testimony heard today. Roll call went as follows: Mr. Timbrook, yes; Mr. Cron, yes; and Mrs. Carpenter, yes. **Motion carried.**

Chairman Timbrook moved, seconded by Mr. Cron, to approve BZA Case #23-0009, Glendean Avenue Parcel (unaddressed), landscape buffer yard variance request based on the staff report, evidence, and testimony heard today. Roll call went as follows: Mr. Timbrook, yes; Mrs. Carpenter, yes; and Mr. Cron, yes. **Motion carried.**

- c. **BZA Case #23-0010 – 408 Pandora Drive (Parcel ID# I39 01103 0007) – R-3, Medium Density Residential District.**

An appeal of an administrative decision to deny the installation of a second curb cut on a residential lot.

Ms. Holt stated this is a request for an appeal of an administrative decision to deny the installation of a second curb cut on a residential lot. In an appeal, the BZA is to determine whether or not there was an error in the decision of any staff, other action, requirement, or any written order. She presented the zoning map and aerial map of the parcel. She stated the appellant is the contractor for the property owner. They submitted an application for a garage on October 2, 2023. In reviewing the application, it included a second driveway for that garage. The applicant was informed that a second driveway would not be permitted along with other revisions needed. A conditional approval was granted as they spoke with the property owner on the next steps whether they wanted to remove the driveway or what action they wanted to take. They decided to appeal the decision, which included the conditions outlined in the approval in the packet. She presented the proposed site plan submitted with the application showing the garage and the second driveway along with the existing driveway. She presented site photos of the subject site and adjacent properties. She added the service department also had a look at the proposal as the curb cut would be a right-of-way review to have a second driveway. She reviewed the relevant UDO sections. She stated that with a garage there has to be a compliant driveway that meets the required setbacks. She stated that the appellant's first claim is that the second driveway will not create any additional access point to the road since it will be constructed parallel to the neighboring driveway. Staff analysis found that the construction of a driveway will create a second access point unless several steps are taken to create a shared driveway with the neighboring party. The driveway at 418 Pandora Drive is five feet away from the property line due to an easement that runs between the properties. The property owner would need to obtain permission from the easement holder to place the driveway in the easement and enter into an agreement with the owner of 418 Pandora Drive. Both owners would also need to request a variance to eliminate the required two-foot setback. The appellant's second claim is that the existing driveway is too short for modern-day vehicles and does not provide adequate space for sidewalk clearance when vehicles are parked. Staff analysis found that the existing driveway is similar in size to many others in the neighborhood. Staff did not observe vehicles obstructing the sidewalk during the various site visits. Staff also found that there are no houses in the general vicinity with two driveways. Staff concluded that the purpose of the code is to limit the number of access points to the public street. Permitting a second driveway at this property would present the owner with several regulatory challenges.

Chairman Timbrook opened the public hearing at 7:44 pm. Mr. Eric VanHoose, 6423 Harbinger Lane, Dayton, OH, took the oath to give sworn testimony. Mr. VanHoose stated that the neighbor to this property has two drives with one having a longer driveway than they are proposing. He stated that the home is a multi-generational home with three licensed drivers. Currently, it is difficult for them, if not impossible, to park two vehicles in the existing driveway without it overhanging into the sidewalk. He pointed out that within the plan the driveway will be two feet off and not be shared. That should clear the need for a variance on that issue. He stated the vehicles currently there will be able to be parked in the rear of the property to free up space for

pedestrians to pass by. He added that he submitted paperwork earlier indicating that many homes in the area have multiple driveways. He named 5126 Bayside Drive, and it is nearly identical to what they are proposing. He stated he believed allowing for the additional driveway would clear up traffic issues by removing vehicles from the right-of-way.

Chairman Timbrook stated they are looking at determining if the zoning administrator made an error interpreting the code and not granting a variance. He asked Mr. VanHoose if he could speak on the interpretation of the code the city made. Mr. VanHoose referenced the existing driveway has no garage for vehicles to access. By adding the driveway, there would be access to the rear of the property. Mrs. Carpenter stated that there was a garage there at one time when the home was built. He stated that the homeowner would have to speak on that. He stated the regular use of the pad there now because of the length of it, vehicles are in non-compliance because they do regularly encroach on the sidewalk. He referenced that the owners received a non-compliance letter because of the inspection; he thinks it is because of the RV, but the truck is pulled up touching the house and the hitch hangs over.

Mr. Roger Ackley, a neighbor of the owner at the subject site, took the oath to give sworn testimony. He stated that he doesn't have a problem with the new driveway; it will make her property more appealing. Her son has a business and has things on a trailer a garage will provide a place for him to put those things. He stated that regarding the issue of the curb cut, the aerial shows the driveway next door has two driveways; the house across the street from them on Denny has a circular driveway, so two openings. He stated it would be a win-win for her and him.

Having no one else come forward, Chairman Timbrook closed the public hearing at 7:57 pm.

Chairman Timbrook stated he is struggling to find how the city interpreted it incorrectly. He asked other BZA members if they saw a way to overturn staff's interpretation. Chairman Timbrook stated it is an access point to the property, and that is the issue.

Chairman Timbrook moved, seconded by Mr. Cron, to uphold the staff determination in BZA Case No. 23-0010, 408 Pandora Drive, based on the standards in the UDO, evidence, and testimony heard today. We find that the staff did not make an error in the determination to limit the number of driveways on the residential property.

ZONING ADMINISTRATOR DISCUSSION TOPICS: Ms. Holt reminded them that Friday is the Planning and Zoning conference for those who are going. She stated that for the first time, there will be a BZA meeting in December on December 19, 2023. It is a variance.

ADJOURNMENT: Mr. Cron moved, seconded by Mr. Timbrook, to adjourn. All were in favor. **Motion carried.** The meeting adjourned at 8:02 p.m.

Chair

Date