

BOARD OF ZONING APPEALS MEETING  
JULY 27, 2021  
7:00 P.M.

I CALL MEETING TO ORDER

Meeting called to order by Chairman Anderson

II ROLL CALL

Members Present: Jeffrey Anderson, Dave Nienaber, Tom Hall, Carolyn Ghantous, Douglas Stahlgren, Michelle Miller, David Gleaves

Staff Present: Carl Lamping

III PLEDGE OF ALLEGIANCE

IV SUMMARY MINUTES OF THE REGULAR MEETING OF JUNE 22, 2021

Motion to approve the minutes presented by Mr. Nienaber and seconded by Mr. Hall.

(Voice vote taken and the minutes were approved with a vote of 7 to 0).

V CORRESPONDENCE - None

VI REPORTS

Report on City Council

Mrs. Ghantous provided a report on City Council meeting held on July 21, 2021. There were 7 ordinances passing with a vote of 7-0, and 1 ordinance passing with a vote of 6-0, 1 abstention.

Report on Planning Commission

There was no meeting on July 13, 2021.

VII CHAIRMAN'S STATEMENT

Chairman Anderson read the Chairman's Statement.  
Five members of the audience were sworn in.

VIII OLD BUSINESS - None

IX NEW BUSINESS

A. New pool at Bacon Residence located at 11819 Neuss Avenue, Springdale, Ohio, is requesting a variance from the Zoning Code Section 153.252 (F) (15), which requires all pools to be located in the rear yard and shall be at least 15 ft. from side yards.

**PUBLIC HEARING** (BZA Application 20211120)

Mr. Lamping provided an overview of the application describing the work that the applicant wants to do that would require a variance. He stated the pool was approved to be placed in the rear middle yard. Upon inspection by the City of

Springdale Building Dept it was found that the pool had been placed 4 ft. from the property line.

Timothy Bacon, 11819 Neuss, stated he placed the pool in the location he did, because the yard is level there. He stated that if he would have placed the pool in the middle of the yard it would have been slanted. Mr. Bacon stated he did ask the neighbors if they were ok with the location. He stated the neighbors wrote a letter, that he provided to someone in the building department when they came to the property. He stated the letter said they are fine with it, and they are here at the meeting to state it is not an issue. Mr. Bacon said he was not aware he would have to attend the BZA meeting for a different location. He stated that he has owned the house for about 3 years. He stated he lived at this residence with his ex-wife for about 15 years.

Mr. Anderson stated that at this time we can have questions from the Board. He informed Mr. Bacon that the question "What is unique about your situation" often comes up. He explained that the variance isn't just for Mr. Bacon it attaches to the property. He stated it is great the neighbors are here, but understand something that is looked for is what is unique about his situation. Mr. Anderson advised now would be a good time to explain if there is anything else in the space.

Mr. Bacon stated there is a tree stump. He stated right out the back door is a patio, and a large tree stump. That is why he couldn't place it closer to his patio. He stated the location is the spot that is most level. He stated the yard is all a downgrade on the slope. He felt the location was the best place to put it.

Mr. Lamping pointed out on an illustration of Mr. Bacon's property from CAGIS (Cincinnati Area Geographical Information System). He pointed out what is thought to be a pool in the shaded area behind the house.

Mr. Bacon stated that is a trampoline in the photo.

Mr. Anderson questioned what the difference in size between the trampoline and the pool is.

Mr. Bacon stated the trampoline is about 12-15 ft. and the pool is 22 ½ ft.

Mr. Gleaves asked if Mr. Bacon installed the pool or if he had someone else install it.

Mr. Bacon stated he did, it is a removable pool. He stated it is already down for the year. His kids complained how hard it was underneath, so he removed it. He would like to put sand under it when he puts it back up next year.

Mr. Hall asked Mr. Bacon if he understood correctly that he had filed for a building permit indicating that the pool would be placed in a different location.

Mr. Bacon stated that when he went to put it up he didn't realize he had to place it in the exact location. He was not aware of the zoning until he started talking with others and was given the information. He stated he started to put it in the middle of his yard, but realized that was not going to work. It said he would maybe be able to fill it with 3 ft. of water in that location, because it was on a tilt.

Mr. Hall asked if he went back to the Building Officials to have the location changed.

Mr. Bacon stated he thinks an email was sent to him asking for the location of the pool. He stated he went to the Building Department to redraw the location.

Mr. Neinaber asked Mr. Lamping if the fact that this is portable/temporary effect the ruling.

Mr. Lamping stated not under the way the rules are written.

Mr. Anderson questioned the leveling of the back lot makes it impossible to place this other places. He stated he is sensitive to a lot variance, Mr. Bacon should be able to have a pool, as least intrusive as possible to get full use of it. Mr. Anderson questioned what it would take to level the lot further away from the fence. He stated because his pool is removable the variance would allow a pool to be installed by the next owner who may not have as good a relationship with the neighbors. You are setting up a situation where someone could set up a water feature right on the fence which has certain dangers to it; drainage, water damage, things like that. Mr. Anderson asked if he could level further in the middle so that in the future when it is reinstalled it's not an issue.

Mr. Bacon said with the size of that pool no he couldn't level it, because if he put it in the middle at the end of his concrete slab it will put it about 10 ft. from the property behind him. He said if it is placed where he had it the neighbor in the back corner and right behind him are 19 ft. off the lot line. He felt the best spot is where he placed it. It's close to his house and on the leveled area.

Mr. Nienaber asked Mr. Bacon which way the yard tilts looking from the front.

Mr. Bacon stated the tilt is towards his house from all directions. His house is the lowest of everyone around him.

Mr. Nienaber asked how deep the yard is from the back of the patio to the back fence.

Mr. Bacon believes it to be about 30 ft. He stated from the patio to the back fence. Mr. Bacon said if he puts it right at the patio it will still put it within 15 ft. of the neighbor behind him. He stated that he put it on level ground which puts it close to the neighbor (pointed), and if something happened he is still downward it would affect his house.

Mr. Stahlgren asked how much space it would take up on the patio. He stated if you leveled the area and removed the stump, how much room would it take to be on your patio.

Mr. Bacon stated the patio is about 10 ft. So about 4 ft. would need to be on the patio, with a chance of vinyl on concrete ripping. It's a pop up pool.

Mr. Nienaber asked if he had considered putting a bed of sand wherever he placed it, because Mr. Bacon had previously stated the kids complained about the ground hurting their feet.

Mr. Bacon said he had not considered it because he didn't know how the sand would be on the dirt compared to the sand on the concrete slab.

Mr. Anderson stated that recently City Council did update the drainage and pool requirements. He advised Mr. Bacon to ask Mr. Lamping about them if he is not familiar with them. It will give him information on who is responsible if there is a leak, and also the process of draining and fill pools.

Mr. Lamping asked the board if they would like to give the neighbors the opportunity to speak.

Mr. Anderson advised the neighbors that they could take the opportunity to add any information. He advised the neighbor to come to the podium.

James Riggs, 11817 Neuss Ave, neighbor, stated him and his wife have no problem putting the pool in the location he has asked for. He stated it is right next to his property, but they have no problem with it.

Mr. Anderson stated in this case with the pool that's your position, what if the pool were larger or in ground, if it was a different neighbor, would you have the same comfort level.

Mr. Riggs stated his property sits higher and it drains to Mr. Bacon's property. He also stated that behind his property levels off and goes towards Mr. Bacon's also.

Mr. Anderson stated one of the things he is reminded of is that the zoning code is to help protect other property owners. He questioned Mr. Riggs if he felt like it would be wrong if Mr. Bacon received privileges like that.

Mr. Riggs said he would not.

Mr. Anderson questioned if the pool was on a concrete pad now.

Mr. Bacon stated it is not. He pointed to the exhibit and stated it was placed in about the same location as the trampoline.

Mr. Anderson stated that another thing the board looks for is the least amount of variance that is required to give you your full rights to your property. He stated there have been past situations that they try to be consistent with, where somebody had other accessory structures close to the fence line and had to move them. Mr. Anderson asked if 4 ft. is really as far from the property line you can get and get the return you want from the pool. The less of the variance that is granted, the more comfortable people tend to be with it. 4 ft. is very close in his opinion for a pool.

Mr. Bacon stated if he can get the stump removed, he can move it closer. He stated it is a large stump. He could probably move it 5 or 6 ft. closer.

Mr. Anderson asked if 10 ft. from the property line would get him where he needed to be, instead of the 15 ft.

Mr. Bacon stated he would have to get the stump removed but that should work.

Mr. Anderson stated personally 10 ft. is a lot more comfortable in general for long term for a variance than 4 ft. He stated he understands the nature of the lot makes it difficult and the size of the lot makes it difficult.

Mr. Anderson asked for a motion from anyone on the board.

Ms. Ghantous stated she agrees that the 10 ft. is comfortable and the 4 ft. is not comfortable and asked how it should be worded in the motion to make that the consideration.

Mr. Anderson stated that is a great point and it should be explicate. He stated Mr. Bacon had applied for the variance as written as a 4 ft. variance. He asked if Mr. Bacon was comfortable with the board making a motion/taking a vote on a 10 ft. variance instead, or if he wanted them to consider the 4 ft.

Mr. Bacon stated he was ok with the 10 ft. and getting the stump removed.

Mr. Anderson stated that in reference to Ms. Ghantous question it needs to be explicate and say the distant permitted in place of the 15.

Mr. Hall suggested to the board that in the motion it would indicate that anyone else putting a pool in, in that area, that they would have to conform. He doesn't want this to be a special consideration or a special privilege where the next property owner can come in and say you approved it, so I'll put a pool in.

Mr. Anderson explained that the variance is attached to the property and it can certainly be restricted to the pool, but it wouldn't be specific for the current owner.

Mr. Lamping stated he feels that what Mr. Anderson is saying is the variance stays with the property. So if the variance is created at 10 ft. tonight, for a temporary pool, and this owner or the next decides to apply for an in ground pool they are allowed to put it at 10 ft. from this property. That is how this variance would read.

Mr. Anderson stated he believes it is the only option they have, to grant it to the lot. He stated you cannot give special permission for a specific owner, you grant and it lives with that property. He stated he thinks the special privilege is criteria that the board looks at, if the variance is granted in general is one property owner special exemptions that other property owners in the same situation would not get. Mr. Anderson stated if another property owner went to the board that lives two doors down, and had the exact same lot configuration and grade as Mr. Bacon. The expectation would be they would also get the variance, because Mr. Bacon should not get special privileges with his lot. That is why what is different about the situation is important to note. Mr. Anderson stated that in Mr. Bacon's case he is considering the slope of his rear lot as well as the size in order for him to get normal return that other property owners that did not have a slope and that size yard would get. Mr. Anderson stated some consideration is the flexibility that we get as BZA, we get to state the intent of the zoning code is to make sure you are not right on top of the neighbor, safety issues, drainage issues. He stated that because Mr. Bacon has a sloped lot and narrow lot, he should still have an opportunity for reasonable return. Mr. Anderson stated he was not trying to lecture, but that is his understanding.

Mr. Hall stated that he does understand that, but his only issue is that when he filed for the permit he knew the stump was there and that the land sloped. He stated he turned in a permit knowing he could not put the pool there.

Mr. Bacon stated he was not aware that he had to put it exactly where it had to go, he had never had to do this so he was unaware until he was told he had to tell the exact location. He stated that is when he redrew it with 4 ft., a fence all the way around the yard. He stated he was asked where the exact location of the pool was, and if he had put the fence up. He said the fence was existing. He was informed to draw the location of the fence, he has locks on the fence, with a camera facing where the pool was. He stated he is trying to do everything to keep it safe and secure.

Mr. Anderson asked in regards to Mr. Hall's point, it wasn't an issue that you would be in violation. You drew the initial application the way you believed it to be correct.

Mr. Bacon stated he didn't know and he knew it would be in his backyard. He didn't know he had to put exactly where he was going to place it. When it was addressed with him he showed where the pool was and also the placement of the existing fence. He is doing everything to be safe and secure and he gets notification if there is movement in the backyard. He stated he has solar lights that come on with motion.

Mr. Nienaber stated he wanted to address Mr. Hall's concern about anyone being able to be within 10 ft., and not changing rules. The point really is this particular yard because of the lay of the land is why we are granting a variance and not saying everyone can put it 10 ft.

Mr. Stahlgren made a motion to grant a variance to property owner Timothy Bacon, 11819 Neuss Ave, regarding BZA Application 20211120. The applicant is requesting a variance from Springdale Zoning Code Section 153.252 (F) (15) which states swimming pools be located in the rear yard and located not less than 15 ft. from the rear or side lot line. The request is to allow a variance for the pool to be located less than 15 ft. from the side lot line. Specifically, the distance permitted for the variance, the location of the pool, will be no less than 10 ft. from the property line.

Mr. Nienaber seconded the motion.

Mr. Anderson stated to clarify the intent of the variance is to only give a variance for the side lot line.

A voice vote was taken and the variance was approved with a 7-0 vote.

- B. New Arby's Restaurant located at 11470 Princeton Pike, Springdale, OH is requesting a variance from various Sections of the Zoning Code to allow for:
1. Drive through stacking in a front yard pursuant to Section 153.253 (E) (4),
  2. Building signage on walls not fronting a street pursuant to Section 153.459 (C) (2), and
  3. To not require all screening for a service unit pursuant to Section 153.254 (C) (2).

Mr. Lamping stated that the City Planning Commission has approved the plans and other construction documents. The staff is getting ready to approve a new Arby's at the current Steak 'N Shake on Princeton Pike. During the course of development there were three items that did not comply with the zoning code. The planner recommended these come before the BZA to be heard for variances.

Jack Jones, Director of Construction and Facilities for Restaurant Management, 4000 Smith Rd, STE 400, Cincinnati, OH 45029.

Mr. Lamping asked the board if they wanted to handle this as three separate items, or one variance with three items.

Mr. Anderson stated he preferred doing it as one. If there is confusion the board can break them out, unless staff thinks it would be easier as three.

Mr. Lamping stated one is better.

Mr. Anderson stated it is one variance with specific items. He stated because they are different topics and to make it easier, they will address them one at a time. The board will go through them A, B, C just like in the agenda and go through questions and answers for each, and one motion at the end.

Mr. Jones stated that on the signage, 128 sf is allowed, for the frontage side (west side). He asked Mr. Lamping to bring up an exhibit to show the board members. That side of the building would be facing Princeton Pike. Arby's is requesting to relocate some of the signage to the front and on the drive thru side, and not have everything on one side of the building. He stated he is aware this property is zoned differently, GB, but Culverts is a PUD and allowed signage around the entire building. Mr. Jones believes Culverts has a special condition because they are a PUD.

Mr. Lamping stated the special condition is the private drives on and around the Arby's building. There is a private drive on the south, and the driveway that is on the east that goes up through the PUD. He feels this is important to see and understand. Per the zoning rules the signs are not allowed, except on the frontage. The PUD has interior drives.

Mr. Anderson wanted to clarify that the PUD does not include the property for Arby's. The Arby's property is in General Business.

Mr. Lamping stated that it is technically out of the PUD, and that is why it didn't all go to the Planning Commission.

Mr. Anderson stated that in terms of special privilege, the board does consider that it is in a different zoning district. A PUD has different rules. Mr. Anderson

acknowledged the concern that the neighbor has signage, but they happen to be in a PUD. He stated there is a process to get a PUD change.

Mr. Anderson asked Mr. Lamping to highlight the area on the exhibit where the drive thru stacking would be.

Mr. Lamping showed a picture of the site at current view, which it is a Steak 'N Shake building. He pulled the site plan up for the view of the Arby's layout.

Mr. Anderson asked if they were removing the current building.

Mr. Jones confirmed that they are and relocating the new building on that property. Mr. Jones stated that they are asking to extend the stripe down the frontage. He stated with Covid and people using the drive thru the cars will stack in this space any way. There is nothing that can be done to stop it. The stripe is just to make it safe.

Mr. Anderson asked if Princeton Pike was at the bottom of the site plan, and the variance is to allow for stacking in view of Princeton Pk. Basically.

Mr. Jones confirmed that is the request. He stated there is enough stacking per the code. They are just asking for the stripe for safety reasons because it will back up into that area.

Mr. Anderson asked to be shown on the site plan the entrance to the property.

Mr. Lamping stated there are two. One is on the south side, an exit, and on the northern portion of the east side of the property is an entrance.

Mr. Anderson asked if there was an entrance from Princeton Pk.

Mr. Lamping stated that no the entrance is through the PUD.

Ms. Miller asked if the stacking was a single lane.

Mr. Lamping stated the violation is on the opposite side of the building from the drive thru window. The stacking is not allowed to be on the Princeton Pike side of the property.

Ms. Miller asked if it was like some other drive thru with two lanes.

Mr. Lamping stated that this is not that issue.

Mr. Gleaves asked a question about signage being a corporate direction.

Mr. Jones stated that corporate does require the signs. They are required to have certain signage on the building. He stated they did not have a request for anything on the south side, at the back of the building. He stated they are under the total allowed square footage, and thought it was responsible to have on the front and down the drive thru.

Mr. Anderson asked for other questions on the stacking at this time. He does believe it will naturally stack and marking for it is important. He does believe this is a unique placement of an Arby's. He feels the zoning code largely assumes more of the traditional lot with a street and frontage. He feels being directly adjacent to a PUD is also unique in general in regards to the lot placement. Mr. Anderson stated they would now move on to the signage and not fronting a street.

Mr. Stahlgren stated in regards to the signage that is asked for that is not front facing, if the proposal would be to only allow for a specific square footage for the side walls.

Mr. Anderson stated that is important to mention in the variance, and that variance described talks about staying within a certain size, cumulative. He would prefer to see that because it is more in spirit with the zoning code in relation to how this lot is set up. Mr. Anderson questioned the variance being talked about, if the board would restrict it to the sizes that are requested, would it be sufficient.

Mr. Jones agreed it would be.

Mr. Nienaber asked that the board have empathy because Arby's is calling the shots on where they want the signs. He believes that needs to play into the boards thinking.

Mr. Stahlgren asked that in years to come and Arby's corporate changes their sign specifications and want to require a sign that is larger on a side, does the board give a little more leeway to the square footage to allow for changes in the future.

Mr. Jones stated he has been with the company for 41 years, he has done remodels and built a lot of them. When they do a site they do a 20 year license, and other than minor upgrades inside for furniture, Arby's does not touch anything for 20 years.

Mr. Lamping stated they could approve it as written and submitted, and if they want to make changes in years to come they could have it revisited by the board.

Mr. Jones stated they have listed what the sign sizes are and they can stay to those specific square footages per sign. If they would need something changed in the future they could come back before the board.

Ms. Miller feels the property is unique from the perspective that if visitors, or people out shopping in the center to the east look at the building, signage is the least problematic.

Mr. Anderson stated he would like to add to Mr. Stahlgren's specificity with the current variance is that it is limited to what's requested. He doesn't want to be in a situation that enables fast food wars between someone in the PUD and their adjacent neighbor.

Mr. Hall noticed that on another Arby's location there wasn't the same signage requested, and questioned if it was because that location was on a main thoroughfare.

Mr. Jones stated there is a monument sign that has been approved for the main ID sign.

Mr. Hall stated he didn't notice the signs on the building.

Mr. Jones explained there are two older Arby hats and another sign on the front of the building.

Mr. Hall questioned that granting the variance would give them more exposure to Princeton Pike and that is the request.

Mr. Anderson agrees with Ms. Millers point about people at shopping center being able to see what it is. Mr. Anderson stated they would now move on to the screening for the service unit.

Mr. Lamping asked Mr. Jones to show the location on the site plan for the transformer in question.

Mr. Lamping showed the location of the transformer on the site plan. It is on the site and with the new location of the building. Mr. Lamping stated he thought it was in the right of way, so there was discussion as to the correct location to point out to everyone.

Mr. Jones stated that it is next to the drive thru lane.

Mr. Anderson asked for the reason it could not be screened.

Mr. Jones stated because it is right next to the drive thru lane. He stated the expenses to move it would be outrageous. He stated they have designed everything around it gas, water, and sewer.

Mr. Anderson asked if it was a shared transformer.

Mr. Jones stated it is only for the property in review.

Mr. Lamping advised that it is an existing condition because of the Steak 'N Shake that was there.

Mr. Jones stated they are just going to repurpose it.

Ms. Miller asked about the existing location next to a dumpster.

Mr. Jones advised that the dumpster will no longer be there, and they are placing a nice planter system around it.

Ms. Miller want to clarify that the existing transformer is what will remain.

Mr. Jones stated he will paint it whatever color the board members want. He also stated that Duke Energy will not allow anything to be placed within three feet of the transformer.

Mr. Nienaber asked that if there would be bollards protecting the transformer, because it doesn't show on the site plan.

Mr. Jones stated that there will be and that is shown on the civil drawing.

Mr. Anderson stated he thinks this is another case where the wording is important. The request is not to require all screening for the service unit. He wanted to clarify the request is for only on the one side it is not required. He stated the plantings are still required, and he doesn't want to give the impression that the plantings are not required.

Mr. Lamping stated the plantings are required as shown on the plan, and that could be referenced and approved as shown on the plan.

Mr. Anderson asked Mr. Stahlgren if he was comfortable with that.

Mr. Stahlgren wanted to clarify that it is specific to the one side for the variance.

Mr. Anderson stated using the phrase that has been used before "Plans submitted to the city as of this date." He feels that covers the board so that it is clear.

Ms. Miller had a question for Mr. Lamping, asking if there was a variance on the transformer now.

Mr. Lamping stated he understands these kind of conditions on existing buildings were the reason why the rules were rewritten.

Mr. Anderson believes that predated the last change. He asked for further questions on the screening. He does feel comfortable doing this as one variance and asked if anyone wanted to them separately. He asked Mr. Stahlgren if we was comfortable doing this as one variance.

Mr. Stahlgren made a motion to grant a variance to Arby's Restaurant, 11470 Princeton Pike, regarding BZA Application 20211153.

1. Applicant is requesting a variance from Springdale Zoning Code Section 153.253 (E) (4) to add additional stacking spaces.
2. Applicant is requesting a variance from Springdale Zoning Code Section 153.459 (C) (2) for consideration of relocation of wall signage. Specifically the signage will be on walls not fronting the street. The variance permitted is based on the request as submitted to the City. Specifically the square footage on the west elevation will be as requested at 47.4 sf and signage on the east elevation to be as requested at 12 sf.
3. Applicant is requesting a variance from Springdale Zoning Code Section 153.254 (C) (2) which requires mechanical equipment, including transformers, to be screened per requirements of section 153.404 (D). The request is to not require screening of an existing transformer, specifically as the plans were submitted the request is and would be approved to not screen the southeast side.

Mr. Hall seconded the motion.

Mr. Anderson wanted to make clear as intended on the first point on the stacking, the intent is to allow stacking on the side that is not currently permitted.

Mr. Stahlgren stated that was correct.

A voice vote was taken and the variance requests were approved with a 7-0 vote.

C. New Fence submitted as an appeal at Smithfield Packaged Meats located at, 801 E. Kemper Rd is requesting to table. (BZA Application 20211152)

Mr. Lamping stated the applicant filled out the application and sent the information and requested an appeal to allow a fence. When it was reviewed his request was to appeal staff decision. That is not the intent and the intent is to ask for a variance. After discussion with the applicant it was clear that his communication was flawed and he asked for the item to be tabled.

Mr. Anderson asked to take a vote to table the request.

Mr. Hall made a motion to table article C and to move forward with it at the next regularly scheduled meeting per the staff's recommendation.

Mr. Gleaves seconded the motion.

A voice vote was taken and the request was approved with a 7-0 vote.

X DISCUSSION - NONE

XI ADJOURNMENT

Mr. Nienaber made a motion to adjourn.

Ms. Ghantous seconded the motion.

Chairman Anderson adjourned the meeting.

Respectfully submitted,

\_\_\_\_\_, 2021 \_\_\_\_\_  
Chairman, Jeffrey Anderson

\_\_\_\_\_, 2021 \_\_\_\_\_  
Secretary, Tom Hall