

**MINUTES**  
**COLUMBIA CITY BOARD OF ZONING APPEALS**  
**REGULAR MEETING**  
**MAY 9, 2024**  
**7:00 P.M.**

**WHITLEY COUNTY GOVERNMENT CENTER**  
**MEETING ROOM A/B, LOWER LEVEL**

**MEMBERS PRESENT**

Stacey Dumbacher  
Cathy Gardner  
Anthony Romano, Vice Chair  
Dennis Warnick

**MEMBERS ABSENT**

Jon Kissinger, Chairman

**STAFF**

Nathan Bilger  
Amanda Thompson

**ATTORNEY**

*absent*

(E)lectronic participant

**AUDIENCE MEMBERS**

Two visitors signed the Guest List at the meeting. There were no attendees on the webcast. A Guest List is included with the minutes of this meeting.

**CALL TO ORDER/ROLL CALL/INTRODUCTIONS**

Mr. Romano called the meeting to order at 7:00 P.M. Ms. Thompson read the roll with members present and absent listed above.

**CONSIDERATION OF PREVIOUS MEETING MINUTES**

Mr. Warnick made a motion to approve the April meeting minutes as presented. Ms. Gardner gave the second. The motion passed 3-0-1; Ms. Dumbacher abstained due to not having been present at the April meeting.

**ADMINISTRATION OF OATH**

Mr. Bilger administered the Oath to the visitors.

**OLD BUSINESS**

There was no old business.

**NEW BUSINESS**

**1. 24-C-VAR-3**

Timbers Edge Development, LLC, requested approval of side yard setback Variances for the primary plat of Timbers Edge, Section 2. Mr. Bilger explained the proposal to reduce the side yard setbacks from 7' to 6' for all 47 lots. He described that the properties had received approval for rezoning to R-3, Multi-Family Residential District, with Zoning Commitments (23-C-REZ-2). Mr. Bilger also noted that Timbers Edge, Section 1, had received Variance approval for 5' side yard setbacks on Lots 2-11, along with a reduced front yard setback for

all 29 lots. He displayed images of the plat and the aerial view and stated he had no suggestions for conditions of approval. Ms. Gardner asked if the subject property was rezoned or not, as the information seemed conflicting. Mr. Bilger explained that the petition had been approved, but it would not be rezoned until after zoning commitments had been recorded, as this was a condition of the approval. He confirmed for Ms. Gardner that the variance requested would be from the R-3 District and that the request was for all lots in Section 2. There were no further questions for Mr. Bilger, and Mr. Romano requested to hear from the petitioner.

Brooks Langeloh distributed large copies of the plat to the Board. He described that the setback variance for Section 1, being for just part of the subdivision, had become confusing, so it had been decided to request the setback variance for all lots in Section 2. He also commented that, to date, all but one lot in Section 1 had been developed, and the lots with 5' setbacks had been in the highest demand. Mr. Langeloh described having been part of discussions regarding the need for affordable housing in Columbia City, but he said the development standards were outdated and limited the ability to develop affordable homes. He explained how a slightly reduced setback could allow more lots, lowering the cost of development and therefore lowering costs for the prospective buyers. Mr. Langeloh stated that without the requested variance, the plat would be redrawn, losing approximately four lots, and the loss of just four lots would increase buyers' costs by \$5,000.00 per lot on the remaining lots. He added that the variance would allow the builders to position the homes to better maximize the backyards.

Ms. Gardner commented that she felt having distance between neighbors was advantageous; she had visited Section I and saw a variety of distances between homes. Ms. Gardner stated that she spoke with one property owner who voiced that they would have preferred a little more space between their home and their neighbors'.

Ms. Gardner asked what was planned for the northern parcel. Mr. Langeloh stated that a plan had not been determined; the topography was extreme, and a lift station would be required, which would be costly. He said Block A was created in order to reserve access to the property so that there were multiple options for its future.

There were no further questions for Mr. Langeloh, and Mr. Romano asked if anyone else wished to speak; hearing none, he closed the public hearing. Mr. Warnick made a motion to approve 24-C-VAR-3 for 6' side yard setbacks for all lots. Ms. Dumbacher gave the second; motion passed 4-0.

## **2. 24-C-APP-1**

Rachel Witte requested an appeal of Staff's interpretation of §2.07 of the Columbia City Zoning Ordinance with regard to a fence proposed to be located in the street right-of-way at 301 N. Line Street. Mr. Bilger reminded the Board that the general subject of this case was discussed at the previous meeting, and the consensus was that more specific details would be needed. The petitioner was notified that their request would require variance approval, and 24-C-APP-1 was the appeal of that interpretation. Mr. Bilger stated that the nature of the appeal was to clarify the applicability of the Zoning Code to rights-of-way and to clarify the need for a fence permit and/or Variance approval. He explained that the proposal to construct a 6' privacy fence 6' into the street right-of-way had been approved by the Board of Works.

Mr. Bilger described that the subject property had been platted in 1854 as part of Harley's Addition, with 82.5' of street right-of-way. He discussed that some older plats appeared to utilize the property line as the building line, which then yielded the larger rights-of-way. He presented a 1928 Sanborn map depicting the location of homes at the time, which were primarily constructed along the front property line.

Mr. Bilger displayed the zoning map and observed that the map was not drawn to include the rights-of-way; the original 1955 zoning map also excluded rights-of-way. He stated that if the Board determines that the zoning does not apply to the rights-of-way, then the Board of Works' approval should be sufficient for right-of-way encroachments. But, he said, if the Board decides that zoning does apply to the rights-of-way, then standards are needed to determine what is permissible in the area. Mr. Bilger referred to §1.06 and §3.05 which appeared to support the application of zoning within rights-of-way. He further referenced §2.07 and the definition of "yard;" both of which also seemed to give evidence that zoning should apply to rights-of-way.

Mr. Bilger noted that there had been two similar requests in the past, in 2014 and 2018, which received Board of Works approval and obtained building permits. He displayed images of both. He stated that complaints had been received by the department and the City on the 2018 project, due to visibility impairment, which caused staff to reevaluate the process. He described that because the Code states fences may be located in "yards," which by definition does not include rights-of-way, both a Variance and a Board of Works approval seemed necessary. Mr. Bilger pointed out for Ms. Dumbacher that for the subject case, the Board of Works had considered visibility and required that the petitioner modify her request accordingly, which she did.

Listed in the Staff Report, Mr. Bilger posed five questions to the Board in hopes of helping to determine the most appropriate process for right-of-way encroachments. Mr. Romano recalled that the members had varying opinions at the previous meeting, and he added a question for discussion: Is the intent of the Zoning Code different outside of the property line? He considered that if zoning does not apply to the rights-of-way, someone could request and be approved for something that might not be permitted inside the property line, such as, a 10' fence. He added that he felt the sections of the Code that Mr. Bilger referenced demonstrated that it was the intent of the Code that zoning should apply to rights-of-way. Mr. Romano further stated that it seemed the petitioner's proposal did not exceed the Code requirements and would not have needed a Variance approval. Mr. Warnick expressed that he felt these cases should be solely reviewed by the Board of Works. Mr. Bilger noted that the Board of Zoning Appeals' cases were public hearings whereas the Board of Works' cases were not. He added that the Board could consider requesting the Plan Commission and Council to clarify or change the Code. Mr. Romano voiced support for requesting clarification and said that if zoning did not cover the rights-of-way, it would create potential loopholes in the Code. Mr. Romano asked Ms. Gardner for her opinion. Ms. Gardner replied that her experience was that the Zoning Code applied to the Zoning Map, and that the Zoning Map did not include the rights-of-way. She stated that if the Board of Works wanted to take responsibility for the rights-of-way, approving structures and etc., then any liability of those decisions would fall on them, and she did not want to be held responsible for something that might happen because of their (the Board of Works) approval, as this area was not governed by the Board of Zoning Appeals. Ms. Gardner wondered who would be liable if the Board of

Zoning Appeals approved a Variance in the right-of-way and there was an injurious result. Mr. Bilger replied that as long as the Board members were acting in good faith, for or against, then they would be protected by the municipal legal counsel, as a Board.

Ms. Gardner considered the site plan and observed that there should not be issues with visibility. She also expressed that if the Board made a decision on the case, it would set a precedent that all other encroachment requests would need Board consideration. Mr. Romano said again that he didn't feel all encroachments should receive Board approval but only those that exceeded the development standards requirements. Ms. Gardner and Mr. Romano discussed their perspectives. Ms. Dumbacher suggested that Mr. Bilger ask for clarification of the Code. Mr. Romano agreed and added that if the Board of Works was considering the Zoning Ordinance when reviewing right-of-way encroachments, then that would alleviate his concern.

Mr. Romano requested to hear from the petitioner. Rachel Witte introduced herself to the Board and explained that she requested the fence for privacy and to allow more freedom for her dog. She added that the Board of Works stated the fence could not go past the front corner of the house, because of visibility. Ms. Witte confirmed for Ms. Gardner that the Board of Works indicated that after their approval, her next step was to obtain a building permit. Mr. Bilger confirmed for Mr. Romano that one of his questions was whether or not a building permit would be needed for the portion of the fence that would be located in the right-of-way. Ms. Gardner suggested that the permit be issued for the entire fence but indicate that the portion of fence located in the right-of-way was approved and permitted by the Board of Works.

Mr. Romano asked if anyone else wished to speak about the petition. Hearing none, he closed the public hearing. Mr. Bilger clarified for the Board that their determination would be regarding whether or not Ms. Witte's proposal required Variance consideration and/or a building permit, and then to consider what directive (regarding the Code) would follow. Mr. Romano stated that he did not feel Ms. Witte's proposal required Variance consideration because it was within the requirements of the Code. Mr. Warnick agreed no Variance should be needed, but his reason was that he did not feel the Board of Zoning Appeals should consider what the Board of Works had already approved. He added that the Zoning Code should be updated to eliminate confusion. Ms. Gardner suggested the Board of Works might consider holding public hearings. The members discussed whether or not the Board of Works considers the Zoning Ordinance when reviewing right-of-way encroachment requests.

The Board redirected their focus to the specifics of Ms. Witte's appeal and discussed thoughts for a motion. Ms. Dumbacher made a motion that "no variance is required and that we will defer to the Board of Works in their decision." Mr. Romano suggested "for tonight," and Ms. Dumbacher added "for tonight." The Board discussed adding a directive to clarify the Code, and Mr. Bilger recommended that be a separate motion. Ms. Dumbacher restated her motion "that there's not a Variance required, and we defer to the Board of Works' decision as the authority." Ms. Gardner gave the second. The motion passed 4-0.

The Board discussed thoughts towards a directive. Mr. Bilger determined the consensus was that "things needed to be updated, and exactly how or under what intent is, needs to be addressed."

**OTHER BUSINESS**

There was no other business.

**ADJOURNMENT**

Mr. Warnick made a motion to adjourn. Ms. Gardner gave the second, and the meeting was adjourned at 8:20 P.M.

**GUEST LIST**

1. Brooks Langeloh ..... 818 N. Newport Run, Columbia City
2. Rachel Witte ..... 301 N. Line Street, Columbia City

**GUEST LIST (WEBCAST)**

3. None.