

**MINUTES**  
**Board of Zoning Appeals**  
**May 13, 2025**

The Wyoming Board of Zoning Appeals (BZA) met Tuesday, May 13, 2025 in the Council Chambers of the City Building. The meeting was called to order at 6:00 p.m. by Charlie Jahnigen, Chair. Attendance was as follows:

**Members**

Charlie Jahnigen  
LaToya Wall  
Chris Woodside

**Absent**

Abigail Horn  
Bob Kearns

**Staff**

Tana Bere, Community Development Specialist

**Approval of April 8, 2025 Meeting Minutes:**

Mr. Woodside moved to approve the minutes as written. Ms. Wall seconded the motion. By roll call vote, all voted yes, the motion carried.

**Swearing In:**

Mr. Jahnigen swore in all those present who would be providing testimony.

Mr. Jahnigen read the provisions of Section 1137.04 of the Code, which states in part that the Board is to hear and decide requests for a variance provided all the following items have been addressed:

- (1) That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same area;
- (2) That exceptional or extraordinary circumstances or conditions apply to the subject property that do not apply generally to other properties in the same area;
- (3) That the essential character of the neighborhood would not substantially be altered
- (4) That adjoining properties would not suffer a substantial detriment as a result of the variance;
- (5) That the variance would not adversely affect the delivery of governmental services, (e.g. water, sewer, garbage, police protection, fire protection);
- (6) That the special circumstances or conditions do not result from any action of the property owner or any of the property owner's predecessors in title;
- (7) That the property owner's request for a variance cannot feasibly be obviated through some method other than a variance; and
- (8) That the spirit and intent behind the zoning requirement affecting the area would be observed and substantial justice done by granting the variance.

**Case #3-25: 4 Worthington Avenue, Side Yard Setback Variance Request**

Ms. Bere provided the background of the case. Harkavy Properties LLC, as represented by Timothy Harkavy, is requesting a variance to construct a deck within the limits of both required side yards. The deck (already under construction) is 32' wide by 16' long and is constructed of pressure treated pine. The deck is attached

to the building and therefore is a continuation of the building, and subject to the setback requirements of the zoning district. The corner lot property is located in the "C-3", Four-Family Residence Plus Office Use District. §1167.06(b) of the Code states that side yard regulations are the same of those in the "C-1" Four-Family Residence District, which then refers it to the side yard setbacks of the "B" Two-Family District. §1159.05(b) of the Code requires a 15' minimum side yard setback. As shown on the site plan, the deck is 7.2' from the northern property line and 4.1' from the eastern property line (at their closest points), requiring a variance of 7.8' and 10.9', respectively. The deck fails to meet this provision of the Code, and a variance is being sought on this basis.

Tim Harkavy identified himself as the property owner of both 4 Worthington Avenue and 400 Springfield Pike. Mr. Harkavy explained that he did not have an extensive statement to present but wished to highlight that the adjacent property is owned by the Wyoming School Board, whose members he is well acquainted with. He noted that he had voluntarily undertaken landscaping and maintenance work on their property, including planting birch trees. This effort was positively received, and he had requested a letter of support from the School Board to accompany his variance application.

Ms. Wall inquired whether any correspondence had been received from the School Board or the neighbors. Ms. Bere confirmed that the final page of the application package included a letter from the School Board in support of the project and expressing no objection to the variance request.

Mr. Woodside asked Mr. Harkavy for further clarification about a brick wall on the property. Mr. Harkavy responded that the wall was originally part of a garage structure, which had since been removed, leaving the wall as a freestanding element. He noted that they decided to keep the wall for aesthetic reasons and clarified that it was not physically connected to the main building. The interior space is being used for parking, and future plans include landscaping around the area and installing lampposts to enhance its visual appeal.

Mr. Kearns asked about the purpose of the posts on the deck. Mr. Harkavy explained that they were intended to support a small sun break, providing some shade. He added that there were no plans to install any railings. Instead, they intended to regrade the area so that the deck would be at ground level, eliminating the need for railings. He described using a Bobcat to clean up the area and applying topsoil, with the goal of grading the land appropriately so that the deck transitions smoothly to the ground.

Mr. Jahnigen then asked whether the apartment deck would be furnished or left to tenants. Mr. Harkavy responded that they would be furnishing the space with picnic-style furniture, as part of their efforts to create a homely, communal environment for tenants.

Mr. Woodside sought clarification on whether the variance request was for a structure that had already been built. Mr. Harkavy confirmed this, noting that construction had begun before the variance was granted. He acknowledged receiving a stop-work order and admitted to mistakenly relying on county setback standards. He said that although he was unaware of the city-specific requirements, ignorance of the regulations was not a valid excuse.

Ms. Bere pointed out that a new fence was visible fronting Worthington Avenue. Mr. Harkavy explained that this fence was temporary, constructed in a day to screen construction debris and dirt during cleanup. He

assured the Board that it would be removed upon completion of the project. He said the intention to surround the area with landscaping, particularly using pine trees along the side.

At this point, Mr. Jahnigen proceeded to read aloud the eight criteria the Board must consider when granting a variance. These criteria include ensuring the variance is necessary for the applicant to enjoy a substantial property right afforded to others; that the subject property has unique conditions; that the neighborhood's character will remain intact; that neighboring properties will not suffer harm; that public services will not be disrupted; that the hardship was not self-created; that there is no feasible alternative; and that the spirit of the Zoning Code is upheld and justice is served.

Ms. Wall noted that while she had no additional questions, she believed landscaping should be included as a condition of the variance approval. Mr. Jahnigen confirmed this could be made a condition. Mr. Woodside remarked that Mr. Harkavy had a commendable history of improving the property and that the deck would serve multiple tenants rather than a single family, which in his view enhanced the utility and appearance of the site.

Ms. Wall emphasized the importance of the planned landscaping, particularly given the property's proximity to the school parking lot. Mr. Jahnigen, who resides at Worthington, acknowledged having observed the deck's construction and initially had concerns. However, given the adjacent school district property and its likely permanence as public land, he expressed his support for the variance, provided the land grading met Hamilton County requirements, and no fence would be added.

Mr. Woodside made a motion to approve the variance as submitted with the caveat that the deck be buffered with landscaping materials selected by the applicant. Ms. Wall seconded the motion. By roll call vote, all voted yes, the motion carried.

#### **Case #5-25: 53 Forest Avenue, Side Yard Setback Variance Request**

Ms. Bere provided the background of the case. Lynn Snyder, owner of the subject property, represented by Designer Donald Schehr, is requesting a variance to construct a deck and screened porch addition within the limits of the required side yard. The property is in the "A" Single-Family Residence District. [§1155.04\(b\)](#) of the Code requires a side yard setback of 7' for one-story elements. As shown on the site plan, the deck is 4' from the side property line, requiring a variance of 3'. Additionally, the screened porch portion is one-story (12.5' in height in the side elevation) and is 9.28' from the side property line, which complies with the 7' setback. The deck fails to meet this provision of the Code, and a variance is being sought on this basis.

Mr. Don Schehr introduced himself as the representative from Schehr Design, located at 7690 Mitchell Park Drive in Cleves, Ohio. He explained that he was present on behalf of Lynn Snyder to present a request for a variance concerning her existing backyard deck. Mr. Schehr explained that the intent of the project was to transform the existing open-air deck into a screened-in space that would provide a comfortable and bug-free outdoor environment for Ms. Snyder and her family to enjoy.

Mr. Schehr noted that the main reason for the variance request stems from the structural requirement to install footers to support a new roof over the deck. These footers, needed to properly distribute the roof load into the soil, would extend into the required seven-foot setback area, thus necessitating formal approval. The proposed enhancement not only aims to provide a roofed and screened enclosure for

recreational comfort but also to structurally reinforce the deck, which is a replacement for the older, deteriorating structure.

Mr. Schehr confirmed that he had submitted a formal letter addressing the eight standard points referenced by the Board. He stated that each point had been addressed in detail and confirmed that the Board had received this correspondence. Additionally, Mr. Schehr shared that the neighboring property owner, Alex Tess at 55 Forest Avenue, closest to the deck had submitted an email expressing no objections to the proposed renovation. The Board acknowledged receipt of this email.

Ms. Wall confirmed with Mr. Schehr that the neighbor referenced was the one closest to the deck. Mr. Schehr affirmed this was correct. Ms. Bere also indicated that the neighbor's email was included in the printed materials provided to the Board.

Ms. Snyder shared that she has lived in the home for most of her life, raising her children there and maintaining strong ties to the community, and that she would likely remain there for the rest of her life. She noted that with age, exposure to the sun has become problematic for her health, and the proposed screened-in space would allow her to enjoy the outdoors comfortably and safely with her family.

Mr. Jahnigen asked if she had constructed the current deck, to which Mr. Schehr responded that while Ms. Snyder did not build the deck herself, she lived in the home when the original deck was built. The original structure had started to rot, prompting the decision to replace it. He noted that a friend, Mark Richman, had constructed the original deck, which had become unstable and required removal.

Ms. Wall moved to grant the request for variance as submitted. Mr. Woodside seconded the motion. By roll call vote, all voted yes, the motion carried.

#### **Case #6-25: 414 Burns Avenue, Front Yard Fence Variance Request**

Ms. Bere provided the background of the case. Bart Vanderzee and Abigail Horn, owners of the subject property, are requesting a variance to construct a 4' tall aluminum fence in the limits of the required front yard. The existing wrought iron fence received a variance in 1995 and is included in the meeting materials. The applicants are proposing the same placement but a different fence type than what was granted in the prior fence variance.

Ms. Bere stated that the corner lot property is in the "A" Single-Family Residence District. There are two parts of the zoning regulations for fences that must be considered. [§1183.09\(a\)\(4\)](#) of the Code regulates the height, length, and style of fences located in front yards, and does not allow fences over 4 feet in height which are non-decorative, and which enclose any part of the front yard. Further, [§1183.10\(a\)\(6\)\(C\)](#) of the Code regulates fences on corner lots, and does not allow a fence to be placed any closer than the front property line than the front yard setback of the main structure on the lot, or the average front yard setback of the subject house and adjacent house on the same street frontage, whichever is more restrictive. The front yard setback (along Poplar Avenue) for 414 Burns Avenue is 16' to the back of the public sidewalk and the front yard setback for 313 Poplar Avenue is 15.6' (according to staff measurements from CAGIS), making the average front yard setback 15.8'. The more restrictive setback for the fence is the setback for 414 Burns Avenue. The proposed fence is 1.25' from the back of the public sidewalk (the same location as the existing fence), requiring a variance of 14.75'. The fence fails to meet these provisions of the Code, and a variance is being sought on this basis.

Mr. Vanderzee explained that the motivation behind the project stemmed from both safety concerns and the deteriorating condition of the current fence. He elaborated that the existing fence, a century-old wrought iron structure, had seen significant wear and tear over the years. Portions of the fence were missing entirely, particularly behind their shed leading toward the rear of the property, a section that was already absent when they moved into the home. To contain their dog, they had temporarily installed a makeshift barrier using plastic fencing material simply to prevent their pet from escaping.

Mr. Vanderzee emphasized that the current condition of the fence poses multiple safety hazards, particularly for their young children. He cited concerns such as sharp edges from broken or rusting parts, chipping paint that could be harmful, and a latch mechanism on the gate that no longer functions properly. The gate frequently swings open, and on at least one occasion, their dog managed to get loose. Given these issues, he noted that repairing the antique fence was not only impractical due to the high cost, but also insufficient in terms of ensuring security and safety.

Mr. Vanderzee mentioned that the existing fence was also an eyesore. Many of the decorative spear tips were missing or bent, and certain parts were twisted out of shape. He explained that this fence replacement project was part of a broader effort to rejuvenate and restore their home. Recently, they had undertaken extensive repairs, including repainting the entire house, fixing the deteriorating back and front stairs, and updating various wooden elements. He also highlighted recent landscaping work that had been completed on their property, particularly along the rear of the house that faces Poplar Avenue.

Ms. Wall inquired about the height of the current fence. Mr. Vanderzee responded that the existing fence measured approximately three feet, four inches tall, and noted that the new fence would be slightly taller. However, he clarified that the new design would follow the exact same footprint and location as the old one, including the setback from the sidewalk. The new fence, although slightly higher, would maintain a similar visual style, including an arched top gate both near the driveway and at the front of the property. The intention, he explained, was to maintain the character of the original fence while improving its safety and durability.

Ms. Bere informed the Board that she had received one written statement in support of the fence replacement from the residents at 312 Poplar Avenue, located across the street. Mr. Jahnigen acknowledged the support and remarked that this particular style of fence had served as a precedent for many similar projects in the village, especially on corner lots. He noted that residents frequently cited the 414 Burns Avenue property as an example when applying for similar fence designs. He expressed his understanding of the safety concerns raised by Mr. Vanderzee and indicated his general support for the project.

Ms. Wall echoed the sentiment, stating that she was in support of the application. She observed that the proposed changes were essentially a replacement rather than a new installation and noted that although the fence would be slightly taller than the existing one, it would still appear as a natural update rather than a drastic change. She complimented the Vanderzee home, noting its beautiful appearance from the street, and acknowledged the limitations of the smaller yard, which left few viable alternatives.

Mr. Woodside moved to approve the request for variance as submitted. Ms. Wall seconded the motion. By roll call vote, all voted yes, the motion carried.

**Miscellaneous:**

Ms. Bere noted that the Board will not meet in June.

**Excusal of Absent Members:**

Ms. Wall moved to excuse Ms. Horn and Mr. Kearns. Mr. Woodside seconded the motion. By voice vote, all voted yes, the motion carried. The members were excused.

**Adjourn:**

With no further business before the Board, the meeting adjourned at 6:33 p.m.

Respectfully submitted,

Debby Martin, Executive Assistant

Charlie Jahnigen, Chair