



Board of Zoning Appeals and Property Review
Commission

February 16, 2021 6:15 PM

Agenda

1. Call to Order
2. Roll Call
3. Approval of prior minutes of January 19, 2021
4. Zoning Appeals
 - VA21-01 Accessory Structure 4184 Franklin Street
 - Staff Report
 - Property Owner
 - Public Input
 - Board Discussion/Decision
5. Property Maintenance
 - Violation 129 W Franklin Street
 - Staff Report
 - Property Owner
 - Public Input
 - Board Discussion/Decision
6. Old Business – Property Maintenance Code review
7. New Business
8. Adjournment

Zoom information: 883 6957 3795

Passcode: 950975

BELLBROOK BOARD OF ZONING APPEALS AND PROPERTY REVIEW COMMISSION
PUBLIC HEARING MINUTES
January 19, 2021

NOTE: Due to COVID-19 this meeting was held via Zoom.

PRESENT: Aaron Burke
Philip Ogrod
Sharon Schroeder
Chairperson Meredith Brinegar

CALL TO ORDER:

Chairman Brinegar called the meeting of the Board of Zoning Appeals to order at 6:15 PM. The Secretary called the roll. Mr. Burke, yes; Mr. Ogrod, yes; Ms. Schroeder, yes; Mrs. Brinegar, yes.

Zoning Administrator Jessica Hansen was in attendance.

Clerk Timmons informed the board that an Ordinance would be adopted to change a procedure of the board. The current code stated that oaths must be taken by a notary public. The ordinance removes this requirement. Going forward oaths will be administered by the Chair of the board.

APPROVAL OF MINUTES:

Mr. Ogrod made a motion to approve the prior minutes of December 15, 2020. This was seconded by Mr. Burke. All were in favor. The motion carried 5-0.

ZONING APPEALS - none

PROPERTY REVIEW COMMISSION

- **Appeal of violation at 129 W. Franklin Street postponed by request of the Property Owner**

Mrs. Hansen reported that for the second time the City had been contacted by the property owner's attorney requesting a postponement. The violation concerned outside storage. There have been pallets of shingles sitting in the parking lot for several months. A violation letter was sent in October 2020. At that time, the owner had stated they planned to do the work in November, so I had not pursued it any further. I also informed them that if the roofing could not happen the shingles should be moved from the front parking lot. No work was done in November, so a second letter was sent to reach out to have a meeting with them. That is when

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they filed an appeal. No fine had yet been assigned. Chair Brinegar asked if it might make sense to look at the code to prevent these ongoing issues. She also asked about the required timing. The property owner had filed the appeal within the 20-day limit. It has just been a problem scheduling their hearing.

PROPERTY MAINTENANCE CODE REVIEW

Mrs. Hansen explained that the Board is being asked to review the Property Maintenance Code. Since this was the first time through the code, instead of going through the code item by item they would discuss and ask general questions. Text in red is new that staff has written for consideration.

Mr. Ogrod brought up the point that there are a lot of things to look at including substance and grammatical errors.

Mrs. Brinegar agreed saying she struggled to understand the difference between junk vehicles and inoperable vehicles. She suggested distinguishing items better. Mrs. Hansen responded that she thinks those terms are similar and should be better defined. For example, if we call a vehicle “inoperable” we would need to know whether it operates or not. If “junk or inoperable” vehicle is used it gives the City more leeway. She suggested grouping the definitions together would help clear up confusion.

Chair Brinegar asked if there were other instances of items that seemed redundant.

Mr. Ogrod pointed out 1450.31e Rodents and Rodent harborage where it states “...towing or inoperable cars”. He suggested changing “cars” to “vehicle”.

Chair Brinegar asked how much authority does a city have when it comes to “unsafe structures”.

Mrs. Hansen explained that only the County Health Department can condemn a structure and sometimes the Building Department is involved. This code gives the city some clarification on the processes.

Mrs. Brinegar liked the clarification of language such as the garbage definition stating that it is animal or vegetable waste. It also includes food prep, tree branches, and tree trimmings. But then “rubbish” also includes tree trimmings. She recommends removing tree trimmings from

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rubbish. Mr. Burke added that garbage states “generated by food preparation operations”. Mrs. Hansen agreed that yard waste needs to be eliminated from the definition of garbage.

Mr. Ogrod asked about the rubbish definition stating, “and similar materials”. He asked if there are any references to cardboard, glass bottles, pallets, or plastics. He could not find any references to plastic in the code. He also added that “tin cans” should be replaced with “aluminum”. He also pointed out that occasionally the word “trash” is used, and we should make sure we are consistent.

Mr. Ogrod asked about references to trailers and RVs. Mrs. Hansen explained that those items are covered in the Zoning Code and are currently with the Planning Board being updated.

Mr. Burke asked about needing a statement concerning historic buildings and application of the code. Mrs. Hansen answered it is usually a vague statement without any real authority. Our downtown is covered by Article 14 and we do take extra care with those properties. But we can put in a statement that fits with Bellbrook’s situation.

Mrs. Brinegar brought attention to 1451.14 which mentions a petition to have a PRC hearing but 1450.6 it requires a written appeal within 20 days. Shouldn’t these use the same terminology? Mrs. Hansen stated these are the same, but we will change the wording to remove the work “petition”.

“Brush piles” was another term Mrs. Brinegar asked for clarification as the code says these piles should not exceed 3 feet. Is that a square foot requirement? Mrs. Hansen said it should say 3 feet in height. She said that was an arbitrary number. There is a limit of one brush pile. We need to better define the size and a time restriction. She added that as long as the pile is screened from view there would not be a time limit. Board members agreed that a better limitation to the size is needed. Mr. Ogrod suggested a 6’ by 6’ by 3’ high as a possibility.

This leads into the need to define wood piles. Mr. Ogrod said the improved language was good. He did ask if there was any limit to how many stacks of wood you could have to make up the three cords and where on your property it is allowed. Mrs. Hansen agreed that this needs to be further defined to include location and stacking. Mrs. Brinegar agreed because there have been cases where wood was just dumped in a pile in driveways. The new wording states that the wood

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can be stacked 8' long by 4' wide by 4' high. Mr. Ogrod suggested maybe adding a maximum of two cords high.

Ms. Schroeder asked how the new codes will be disseminated to the public so that they know there are new requirements. The Clerk explained the process that code changes go through. After all appropriate boards have approved a change an Ordinance goes to City Council. There it will be introduced at one meeting and a public hearing on the proposed change will take place at the next meeting. These meetings are advertised on the website, local media, and postings around the city in public locations. If adopted by Council another announcement is sent out in all of those ways. It will also be included in the quarterly Bellbrook newsletter sent to every property owner. In some cases, such as the new sidewalk requirements, that are a significant change a letter explaining the new code was mailed to all affected residents. Ms. Schroeder also asked how often the code is reviewed. Mrs. Hansen answered that usually code changes are done piecemeal as problems are identified. It might have been 25 years since a full review has been done. That is why it became a goal following the adoption of the Comprehensive Plan. Ms. Schroeder and Mr. Ogrod pointed out that in business the timelines for major and minor reviews are defined.

Chair Brinegar pointed out that she found a term used in 1450.13 that seems archaic. That code refers to "immoral persons". Staff said they would look closer at that term.

Fees for violations was another topic Ms. Brinegar asked to be reviewed since she was unsure if they aligned correctly. Mrs. Hansen made a note to review those references.

Ms. Brinegar asked about the section on repeat offenders and the difference between when offenses are handled by the Code Officer, PRC, or by the County court. Mrs. Hansen said she thinks this refers to a violation that had already been through the PRC process and to court. This wording needs to be revised. Violations stay with the property even if it sells to a new owner.

Chair Brinegar then turned to 1450.32 Exterior Structure Areas includes roof drainage but does not say there needs to be gutters or downspouts. Mr. Ogrod thought he saw a reference somewhere stating they had to be in good repair.

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Ms. Brinegar added questions about the section about windows requiring glazing and opening but doesn't specify whether stripping is included. Mrs. Hansen agreed that a statement needs to be clarified. There also needs to be a requirement that windows cannot be painted black. A subsection of the same code does not include any requirements concerning visible or loose wiring. This also brought up a case concerning solar panels and the need for code.

Mr. Ograd asked if section 1450.31 on vegetation and requirements for keeping it trimmed so as not to be unsightly needs to be expanded. The discussion centered on how that could be defined or policed. This also refers to Chapter 678 of the Municipal Code that states grass must not be taller than 8 inches. There needs to be a limitation on how many appeals can be made. These will require much more editing and review.

Mr. Burke asked about 1450.2 Waiver of Liability for the Code Official and if there is a need to specify the board or commission are also included. Mrs. Hansen said she thinks that should be added.

Mr. Burke then asked if under 1450.15 Demolition Standard permits a deck would be an exception. Mrs. Hansen said there could be cases both ways so it would depend on other factors. And there might be an issue requiring insurance.

Mr. Burke called attention to 1450.31p including a statement about rubbish or trash that is new and in red type that if it is not in a suitable container it will not be picked up by Rumpke and will be considered a violation. Since Bellbrook residents have to put their lawn waste in their trash cans to be picked up the wording of the code might be confusing. Mrs. Hansen replied that the statement should be rewritten to better reflect that trash cannot just be set out by the curb and left there over 24 hours whether it is in a container or not.

Mr. Burke asked if the definition of an "owner" should include an Home Owners Association (HOA). Mrs. Hansen agreed that should be added.

A limitation of a time limit for the use of tarps was another point Mr. Burke brought attention to. The board discussed the need to differentiate tarps. A car cover could be a tarp and that would not require a time limit but other uses. Mr. Ograd mentioned tarps on roofs when repairs are

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needed. A statement could be added for occasions when emergencies happen and a tarp might be required for a longer period of time.

Mr. Burke had one more item concerning a clarification on the use or allowance of a re-hearing since those have happened. Mrs. Hansen will do some research on this topic.

OPEN COMMENT

Mayor Schweller joined the meeting to thank the BZA-PRC for the work they do for the City. He appreciates their volunteering their time and talents to the City in this way. Their help reviewing the Property Maintenance Code is vital as this is a goal that Council has set for the year.

ADJOURNMENT

Mr. Ogrod made a motion to adjourn the meeting and it was seconded by Mr. Burke. Chairman Brinegar adjourned the meeting at 7:43 PM.

Meredith Brinegar, Chair

Pamela Timmons, Secretary

To: Board of Zoning Appeals
From: Jessica Hansen, Planning & Zoning Assistant
Date: February 12, 2021
Subject: BZA Staff Report for BZA Case **VA 21-01 4184 W. Franklin St. – Accessory Structure**

Summary

The request is to install a garage in the rear yard of the property located at **4184 W. Franklin Street, Bellbrook, OH 45305**. Request for variances from section 18.05A of the zoning ordinance.

Applicant Information:

- **Applicant Name:** Michael Turner
- **Applicant Address:** 4184 W. Franklin Street, Bellbrook, Ohio 45305
- **Property Owner:** Same

Location:



Figure 1 Location Map

The property is located approximately 230 feet west from the intersection of W. Franklin Street and N. Belleview Drive.

Zoning:

R-1A One-Family Residential: Intent: *“These districts are the most restrictive of the residential districts. The purpose and intent is to provide for an environment of predominantly low density single unit dwellings plus certain other facilities which*

serve the residents living in the district and to regulate transient occupancy with the city to protect and preserve the permanency of residential neighborhoods, protect property values, and ensure the comfort and safety of the residents. "

Accessory uses: Article 5 Section 5.03 "Private garage for storage of vehicles of residents and employees."

Yard Requirements: Minimum Rear yard 40 feet, Minimum Side yard 8 feet.

Recorded Easements: No recorded easements on the property.

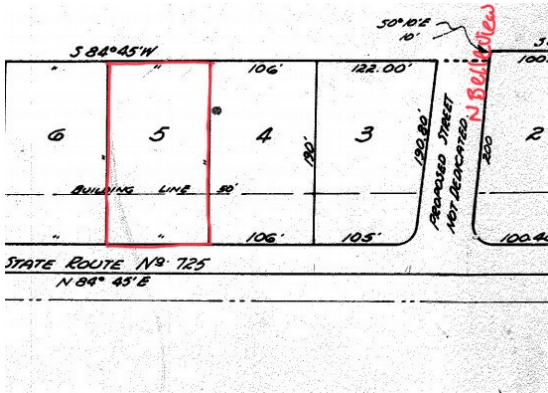


Figure 2 Record Plan/Plat

Accessory Structure Request Information: The applicant wishes to place a 24' x 36' 864 square foot garage in his rear yard. At 16 feet from the side yard and 10 feet from the rear yard on the southeastern side of the property. The building will be approximately 16 feet in height. With the proposed garage the lot coverage would be 13.9 %. (this does not include paved surfaces).

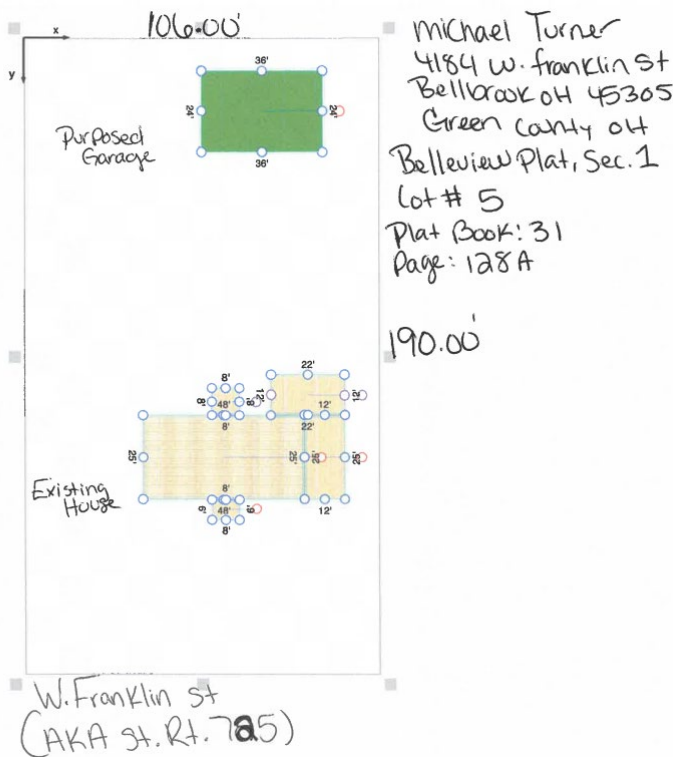


Figure 3 Applicant Provided Site Plan

Main Structure Square Footage and Dimensions:

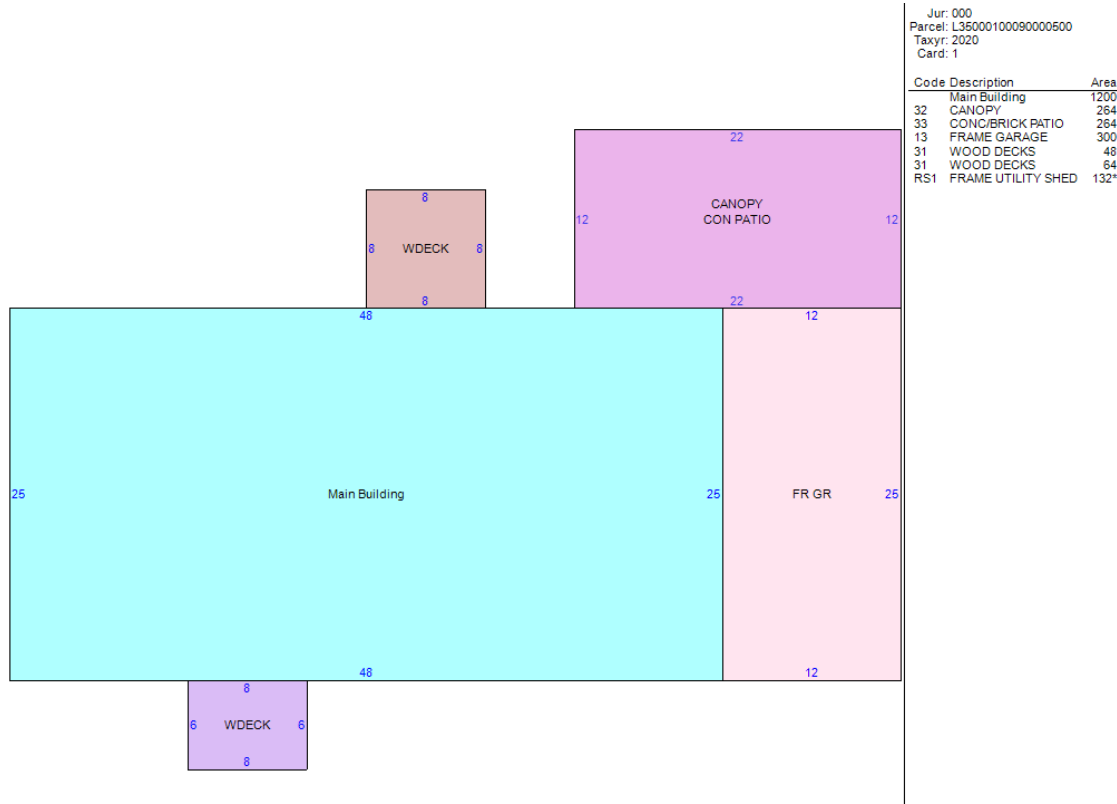


Figure 4 Greene County Auditor's Home Record

Per section 18.05A: "Detached accessory buildings (including garages) constructed on a one-family lot shall not exceed, in the aggregate, six hundred (600) square feet."

"No detached accessory building measuring up to three hundred (300) square feet in Residential and B-1 Districts shall exceed one (1) story or twelve (12) feet in height and no detached accessory building in Residential and B-1 Districts measuring from 301-600 square feet shall exceed one (1) story or 15' in height."

Discussion

The Board of Zoning Appeals should decide whether to grant these variances from Section 18.05A for the height of the structure as well as the additional 264 square feet above the maximum allowed. The applicant states that the garage would be used for storage of a boat as well as other general storage. To date we have received one phone complaint stating the building would be too tall, that it is oversized, and they would prefer it to not be in their neighborhood.



CITY OF BELLBROOK

ZONING PERMIT – ACCESSORY BUILDINGS

15 EAST FRANKLIN STREET, BELLBROOK, OHIO 45305

(937) 848-4666 WWW.CITYOFBELLBROOK.ORG

DATE RECEIVED 1/26/2021 STAFF USE APPLICATION # 20-06

APPLICANT INFORMATION

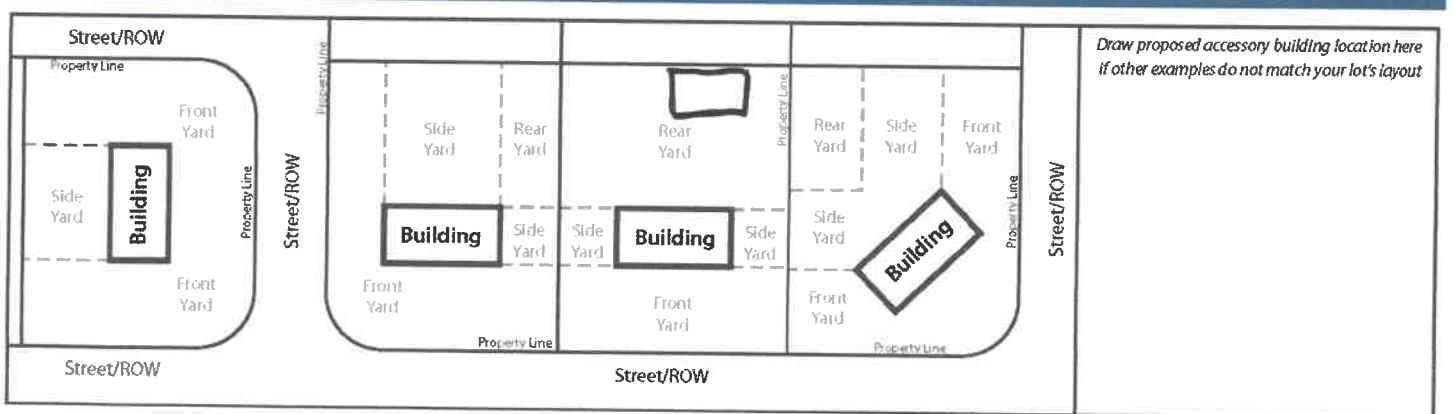
PROPERTY ADDRESS 4184 W. Franklin St Bellbrook OH ZONING DISTRICT R-1A
 PROPERTY OWNER Michael Turner PHONE NUMBER 937-673-2079
 APPLICANT NAME Michael Turner PHONE NUMBER 937-673-2079
 APPLICANT EMAIL TurnerFHT@yahoo.com

REQUEST INFORMATION

TYPE OF LOT CORNER INTERIOR OTHER ACCESSORY BUILDING TYPE SHED GARAGE POOL OTHER
 DIMENSIONS OF STRUCTURE HEIGHT 16 WIDTH 24' LENGTH 36' FLOOR AREA 864 SQUARE FEET
 PROPOSED LOCATION SIDE YARD REAR YARD *DISTANCE FROM PROPERTY LINES SIDE YARD 16' REAR YARD 10'
 WIDTH OF RECORDED EASEMENTS ON LOT SIDE YARD N/A REAR YARD N/A PLEASE DENOTE LOCATION ON LOT TYPES BELOW
 PROPOSED USE OF STRUCTURE Boat & Car Storage
 OTHER COMMENTS _____

ANY STRUCTURE EXCEEDING 200 SQUARE FEET IN GROSS FLOOR AREA OR POOL SHALL BE REQUIRED TO OBTAIN A BUILDING PERMIT.

SHOW PROPOSED ACCESSORY BUILDING LOCATION ON CORRESPONDING LOT TYPE



I HEREBY CERTIFY THAT THE INFORMATION AND STATEMENTS GIVEN ON THIS APPLICATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT IF THE INFORMATION IN THIS APPLICATION IS NOT CORRECT OR COMPLETE, ANY PERMIT ISSUED MAY BE INVALID WITH THE RESULT BEING THAT I MAY BE REQUIRED TO TAKE THE ABOVE-DESCRIBED ACCESSORY STRUCTURE DOWN AT MY OWN EXPENSE. ANY APPROVAL GRANTED BY THE CITY SHALL EXPIRE IF THE WORK HAS NOT BEGUN WITHIN ONE (1) YEAR FROM THE DATE OF APPROVAL.

APPLICANT SIGNATURE [Signature] DATE 01/25/2021

OFFICE USE ONLY		
PERMIT FEE	PAYMENT TYPE	REVIEW AUTHORITY
\$ <u>50.00</u>	CASH <input type="checkbox"/> CHECK <input checked="" type="checkbox"/> # <u>105</u>	ADMINISTRATIVE <input type="checkbox"/> BZA <input checked="" type="checkbox"/> VRB <input type="checkbox"/>
APPROVED <input type="checkbox"/> DENIED <input type="checkbox"/>	STAFF SIGNATURE _____	DATE _____
APPROVED-CONDITIONS <input type="checkbox"/>		



CITY OF BELLBROOK

APPLICATION FOR ZONING VARIANCE

15 EAST FRANKLIN STREET, BELLBROOK, OHIO 45305
(937) 848-4666 WWW.CITYOFBELLBROOK.ORG

DATE RECEIVED 1/26/2021 STAFF USE APPLICATION # VA 21-01

APPLICANT INFORMATION

PROPERTY OWNER Michael Turner PHONE NUMBER 937-673-2079
OWNER ADDRESS 4184 W. Franklin St Bellbrook OH 45305
APPLICANT NAME Michael Turner PHONE NUMBER _____
APPLICANT ADDRESS 4184 W. Franklin St Bellbrook OH 45305
APPLICANT EMAIL TurnerFLHT@yahoo.com

REQUEST INFORMATION

PROPERTY ADDRESS 4184 W. Franklin St ZONING DISTRICT R-1A
SUBDIVISION Bellview 1 All LOT NUMBER 5 PARCEL ID L3500010009000500
DESCRIBE THE GENERAL NATURE OF THE VARIANCE We would like to build a 24x36 garage in our backyard for storage along with storing our boat. If you have any questions please let me know.

SEE THE REVERSE OF THIS PAGE FOR ADDITIONAL INFORMATION TO BE INCLUDED WITH AN APPLICATION FOR ZONING VARIANCE.

I UNDERSTAND THAT APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE APPROVAL FOR ANY ADMINISTRATIVE REVIEW, CONDITIONAL USE PERMIT, VARIANCE, OR EXCEPTION FROM ANY OTHER CITY REGULATIONS WHICH ARE NOT SPECIFICALLY THE SUBJECT OF THIS APPLICATION. I UNDERSTAND THAT APPROVAL OF THIS APPLICATION DOES NOT CONSTITUTE APPROVAL OF A BUILDING OCCUPANCY PERMIT. I UNDERSTAND FURTHER THAT I REMAIN RESPONSIBLE FOR SATISFYING REQUIREMENTS OF ANY PRIVATE RESTRICTIONS OR COVENANTS APPURTENANT TO THE PROPERTY.

I CERTIFY THAT I AM THE APPLICANT AND THAT THE INFORMATION SUBMITTED WITH THIS APPLICATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT THE CITY IS NOT RESPONSIBLE FOR INACCURACIES IN INFORMATION PRESENTED, AND THAT INACCURACIES MAY RESULT IN THE REVOCATION OF THIS ZONING CERTIFICATE AS DETERMINED BY THE CITY. I FURTHER CERTIFY THAT I AM THE OWNER OR PURCHASER (OR OPTION HOLDER) OF THE PROPERTY INVOLVED IN THIS APPLICATION, OR THE LESSEE OR AGENT FULLY AUTHORIZED BY THE OWNER TO MAKE THIS SUBMISSION.

I CERTIFY THAT STATEMENTS MADE TO ME ABOUT THE TIME IT TAKES TO REVIEW AND PROCESS THIS APPLICATION ARE GENERAL. I AM AWARE THAT THE CITY HAS ATTEMPTED TO REQUEST EVERYTHING NECESSARY FOR AN ACCURATE AND COMPLETE REVIEW OF MY PROPOSAL; HOWEVER, AFTER MY APPLICATION HAS BEEN SUBMITTED AND REVIEWED BY CITY STAFF, I UNDERSTAND IT MAY BE NECESSARY FOR THE CITY TO REQUEST ADDITIONAL INFORMATION AND CLARIFICATION.

I HEREBY CERTIFY, UNDER PENALTY OF PERJURY, THAT ALL THE INFORMATION PROVIDED ON THIS APPLICATION IS TRUE AND CORRECT.

APPLICANT SIGNATURE [Signature] DATE 01/25/2021

OFFICE USE ONLY		
APPLICATION FEE	PAYMENT TYPE	REVIEW AUTHORITY
\$ <u>100.00</u>	CASH <input type="checkbox"/> CHECK <input checked="" type="checkbox"/> # <u>105</u>	ADMINISTRATIVE <input type="checkbox"/> BOARD OF ZONING APPEALS <input checked="" type="checkbox"/>
BOARD OF ZONING APPEALS	MEETING DATE <u> / / </u>	APPROVED <input type="checkbox"/> DENIED <input type="checkbox"/> CONDITIONS <input type="checkbox"/>

To whom it may concern.

1-15-2021

Michael Turner
4184 W. Franklin St
Bellbrook OH 45305
937-673-2079

Belleview 1 all, Lot 5, 4184 West Franklin Street Bellbrook OH 45305 Green County

We would like to build a garage with a variance. The garage will be 24x36 totaling 864 sqft. This variance will be 264 sqft. over the low allowed for an accessory building.

1. Yes, the property will have beneficial use without the variance. However, we would like the extra 12^{ft} for boat storage.
2. In my opinion the variance is not substantial. I'm asking for 12^{ft} wider on the garage.
3. No, I don't think it would alter the neighborhood or effect our neighbors.
4. No, It would be at the rear of our property. There are no water or sewer lines



AMENDING THE ZONING CODE

A. PROCEDURES AND REQUIREMENTS FOR VARIANCES (ZONING CODE 20.13)

TO VARY THE STRICT APPLICATION OF ANY OF THE REQUIREMENTS OF THIS ORDINANCE IN THE CASE OF EXCEPTIONALLY IRREGULAR, NARROW, SHALLOW OR DEEP LOTS, OR OTHER EXCEPTIONAL PHYSICAL CONDITIONS, WHEREBY SUCH STRICT APPLICATION WOULD RESULT IN PRACTICAL DIFFICULTY OR UNNECESSARY HARDSHIP - NOT ECONOMIC IN NATURE - THAT WOULD DEPRIVE THE OWNER OF REASONABLE USE OF THE LAND OR BUILDING INVOLVED BUT IN NO OTHER CASE. THE FACT THAT ANOTHER USE WOULD BE MORE PROFITABLE IS NOT A VALID BASIS FOR LEGALLY GRANTING A VARIANCE. NO NONCONFORMING USE OF NEIGHBORING LANDS, STRUCTURES, OR BUILDINGS IN THE SAME DISTRICT, AND NO PERMITTED USE OF LANDS, STRUCTURES OR BUILDINGS IN OTHER DISTRICTS SHALL BE CONSIDERED GROUNDS FOR THE ISSUANCE OF A VARIANCE. THE VARIANCE REQUESTED SHALL NOT ALTER THE ESSENTIAL CHARACTER OF THE LOCALITY, NOR BE IN CONFLICT WITH THE COMPREHENSIVE MASTER PLAN. IN MAKING THIS DETERMINATION, THE BOARD OF ZONING APPEALS SHALL BE ADVISED BY THE RECOMMENDATION OF THE PLANNING BOARD. IN CASES INVOLVING PROPERTIES SITUATED WITHIN THE VILLAGE DISTRICT, AS DEFINED BY ARTICLE 14, SECTION 14.02 OF THE BELLBROOK ZONING CODE, THE VILLAGE REVIEW BOARD SHALL, WHEN POSSIBLE, MAKE A RECOMMENDATION TO THE BOARD OF ZONING APPEALS REGARDING THE DISPOSITION OF THE VARIANCE REQUEST.

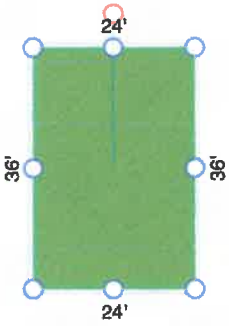
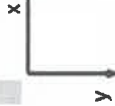
B. APPLICATION AND STANDARDS FOR VARIANCES (ZONING CODE 20.13.2)

A VARIANCE FROM THE TERMS OF THIS ORDINANCE SHALL NOT BE GRANTED BY THE BOARD OF ZONING APPEALS UNLESS AND UNTIL A WRITTEN APPLICATION FOR A VARIANCE IS SUBMITTED TO THE ZONING INSPECTOR AND THE BOARD OF ZONING APPEALS CONTAINING:

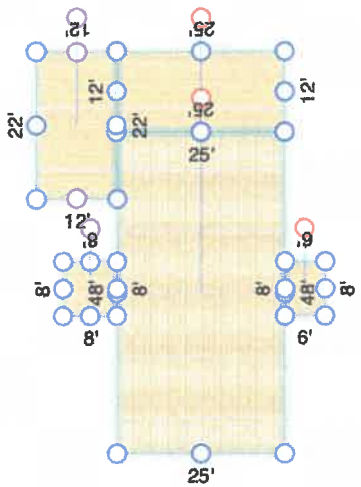
- ✓ a) NAME, ADDRESS AND PHONE NUMBER OF APPLICANTS;
- ✓ b) LEGAL DESCRIPTION OF PROPERTY; AND A SITE PLAN BASED ON AN ACCURATE SURVEY SHOWING EXISTING AND/OR FUTURE BUILDING LOCATIONS AND THE LOCATIONS OF BUILDINGS ON ADJACENT PROPERTIES. THIS SITE PLAN SHOULD BE PREPARED BY A REGISTERED SURVEYOR ATTESTING TO THE ACCURACY OF SAME;
- ✓ c) DESCRIPTION OF NATURE OF VARIANCE REQUESTED;
- d) VARIANCES FROM THE TERMS OF THE ZONING ORDINANCE SHALL BE GRANTED ONLY WHERE THE PROPERTY OWNER SHOWS THAT THE APPLICATION OF A ZONING REQUIREMENT TO THE PROPERTY IS INEQUITABLE CAUSING THE PROPERTY OWNER PRACTICAL DIFFICULTIES IN THE USE OF THE PROPERTY. FACTORS TO CONSIDER INCLUDE, BUT ARE NOT LIMITED TO:
 - 1) WHETHER THE PROPERTY IN QUESTION WILL YIELD A REASONABLE RETURN OR WHETHER THERE CAN BE ANY BENEFICIAL USE OF THE PROPERTY WITHOUT THE VARIANCE;
 - 2) WHETHER THE VARIANCE IS SUBSTANTIAL;
 - 3) WHETHER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD WOULD BE SUBSTANTIALLY ALTERED OR WHETHER ADJOINING PROPERTIES WOULD SUFFER A SUBSTANTIAL DETRIMENT AS A RESULT OF THE VARIANCE;
 - 4) WHETHER THE VARIANCE WOULD ADVERSELY AFFECT THE DELIVERY OF GOVERNMENTAL SERVICES SUCH AS WATER, SANITARY SEWER OR GARBAGE REMOVAL;
 - 5) WHETHER THE PROPERTY OWNER PURCHASED THE PROPERTY WITH KNOWLEDGE OF THE ZONING RESTRICTION;
 - 6) WHETHER THE PROPERTY OWNER'S PREDICAMENT FEASIBLY CAN BE OBIATED THROUGH SOME METHOD OTHER THAN A VARIANCE; AND
 - 7) WHETHER THE SPIRIT AND INTENT BEHIND THE ZONING REQUIREMENT WOULD BE OBSERVED AND SUBSTANTIAL JUSTICE DONE BY GRANTING THE VARIANCE. THE BOARD SHALL DETERMINE, AFTER AND WEIGHING THE FACTORS DESCRIBED ABOVE AND ANY OTHER FACTORS THE BOARD DEEMS RELEVANT, WHETHER THE PROPERTY OWNER HAS SHOWN PRACTICAL DIFFICULTIES SO INEQUITABLE AS TO JUSTIFY GRANTING A VARIANCE TO THE PROPERTY OWNER.

C. THE BOARD ASKS THE APPLICANT TO ANSWER ITEMS 1-7 ABOVE IN WRITING TO BE INCLUDED WITH THIS APPLICATION.

1060.00'



Purposed Garage



Existing House

Michael Turner
4184 W. Franklin St
Bellbrook OH 45305
Green County OH
Bellevue Plat, Sec. 1
Lot # 5
Plat Book: 31
Page: 128A

190.00'

W. Franklin St
(AKA St. Rt. 705)

#38374

CLIENT: Michael Turner

Street Address: 4184 W. Franklin Street
 City or Village: Bellbrook
 Township:
 County: Greene
 State: Ohio
 City Lot Number: Bellevue Plat, Sec. 1
 Plat Lot Number: 5
 Plat Book: 31
 Page: 128A

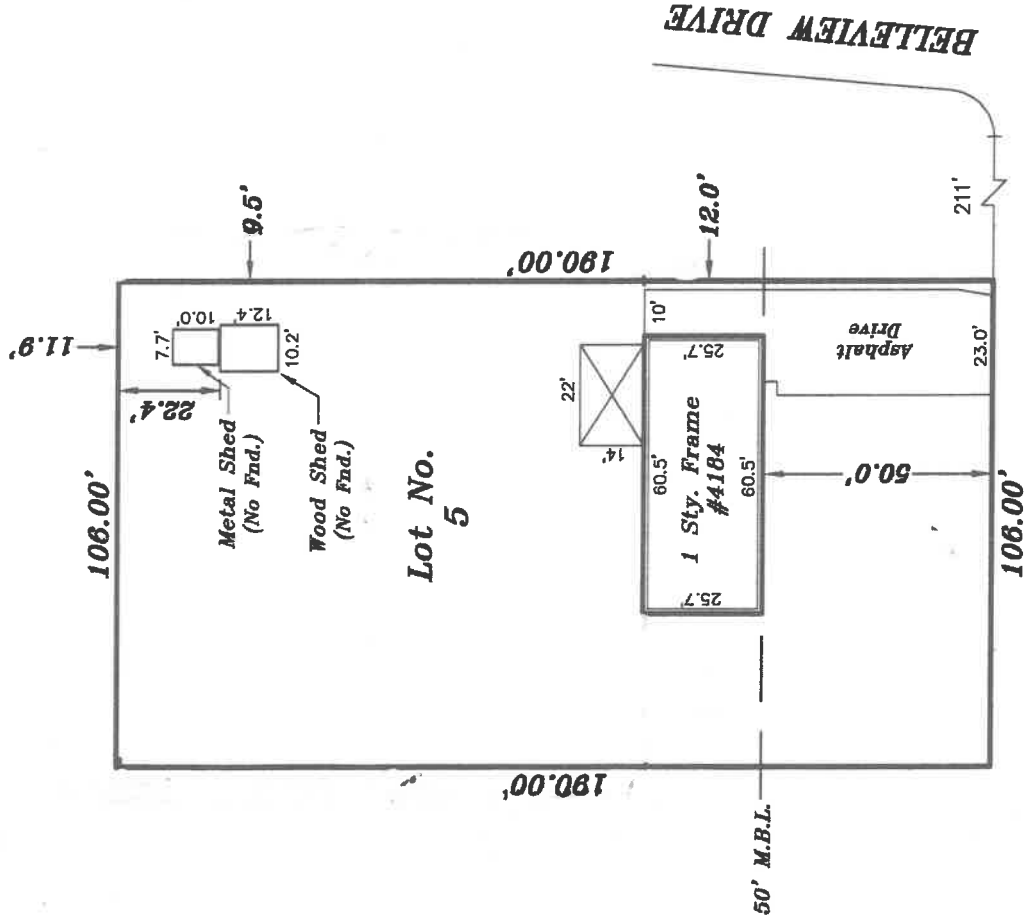
Mortgage inspection made for and at the instance of:

First Ohio Title Insurance Agency, Ltd. & Liberty Home Mortgage Corp.

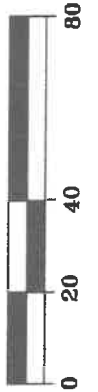
I certify that this Inspection Plat shows the primary improvements as located on the premises described; that they are within lot lines and that there are no encroachments upon the premises described by the primary improvements of adjoining premises, except as indicated.

This inspection was prepared for identification purposes for the mortgage in connection with a new mortgage and is not intended nor represented to be a land or property survey. No corners were set. Do not use for establishing fence or building lines. No responsibility is extended to the land owner or occupant.

BY  REGISTERED SURVEYOR



**W. FRANKLIN STREET
 (AKA ST. RT. 725)**



Mortgage Location Survey is prepared in accordance with Chapter 4733-38 Ohio Administrative Code, and is not a Boundary Survey pursuant to Chapter 4733-37 Ohio Administrative Code.

NORFLEET, BROWN & PETKEWICZ INC.
 ENGINEERS - SURVEYORS
 228 BYERS ROAD, SUITE 204
 MIAMISBURG, OHIO 45342
 (937) 847-2313

SCALE: 1" = 40'
 DRAWN: J.L.N.
 CHKD:
 DATE: 03/08/17
 JOB No.: 17-97758

Area of Interest

Find a location Draw Shapefile

Search for a location

▼ 4184 W FRANKLIN X 🔍

Buffer distance (optional)

Show results within

0 Miles

Report Start Over

Choose a Basemap



2020 Aerial View





Board of Zoning Appeals/Property Review Commission Public Hearing Notice

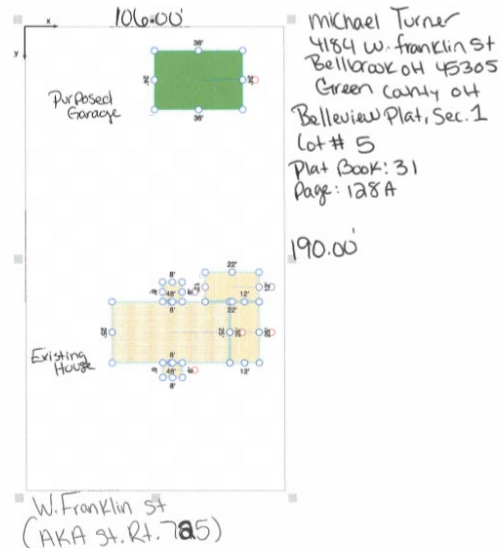
REMOTE MEETING VIA ZOOM*

Date	Time	Location
February 16, 2021	6:15 pm	Via Zoom and Livestreaming on the City's YouTube page (Bellbrook City Hall)

The Bellbrook Board of Zoning Appeals/Property Review Commission will hold a public hearing on Variance Case for **4184 W. Franklin St.** (Bellbrook OH). The public is invited to view the meeting on YouTube.

VA21-01 Is a request by Michael Turner to construct a 24'x36' or 864 square foot garage at 4184 W. Franklin St. in Bellbrook Ohio. The structure will be 16 feet tall. The structure would be used to store a boat and storage.

18.05(a) Detached accessory buildings (including garages) constructed on a one-family lot shall not exceed, in the aggregate, six hundred (600) square feet & no detached accessory building in Residential and B-1 Districts measuring from 301-600 square feet shall exceed one (1) story or 15' in height.



Should any member of the public wish to give their input on the above case may send it to j.hansen@cityofbellbrook.org or by submitting a written letter to the Board of Zoning Appeals by mailing or dropping it off at **15 E Franklin Street, Bellbrook OH, 45305**. Any input received in writing/email will be given to the board for their review.

Anyone wishing to speak via zoom must contact the Clerk of Council by **3 PM on 1/16/21** at p.timmons@cityofbellbrook.org.

Thanks,
Jessica Hansen

From: [Jessica Hansen](#)
To: [BZAPRC](#)
Cc: [Pamela Timmons](#)
Subject: Response from Bernice Stephen regarding VA21-01
Date: Wednesday, February 10, 2021 9:38:17 AM
Attachments: [image002.png](#)

Bernice stated that normally she is against these garages but in this case because the applicant lives on 725, and doesn't have anything directly behind him that she is okay with the proposed garage. She stated she spoke with the applicant about the height and he stated he would be willing to go down to 15 feet. She further stated that she asks no lighting be added to back of the garage because there is a lighting problem in the neighborhood. She also stated that he has small children and with children bikes don't get put on racks.

Bernice lives at 1953 N. Belleview Dr.

Thanks,

Jessica Hansen
Planning & Zoning Assistant
City of Bellbrook
(937) 848-4666
jessica@cityofbellbrook.org



From: [Jessica Hansen](#)
To: [BZAPRC](#)
Subject: FW: Mike Turner - garage
Date: Wednesday, February 10, 2021 1:27:16 PM
Attachments: [image001.png](#)

Another response regarding the upcoming variance case.

From: Josh Gross <josh.gross@bldr.com>
Sent: Wednesday, February 10, 2021 1:25 PM
To: Jessica Hansen <jessica@cityofbellbrook.org>
Subject: Mike Turner - garage

Hello, my name is Josh Gross and I live at 4201 N. Linda Drive. I'm sending this in regards of the issue of a garage being built by Mike Turner on his property. I received a letter in the mail concerning this and will not be able to attend the city council meeting. My property backs up to Mike Turner's property and I'm stating that I have no issue with proposed garage he is wanting to build. I believe there is enough privacy back there and it should not be an issue. If you need any other information from me or have any questions, please feel free to reach out.

Thank You



Josh Gross
Operations Manager
4173 Old Springfield Rd
Vandalia, OH 45377
Phone: 937-898-1358
Fax: 937-898-6960
Cell: 513-615-5582
josh.gross@bldr.com
Visit us at www.bldr.com



To: Property Review Commission
From: Jessica Hansen, Planning and Zoning Assistant
Date: February 12, 2021
Subject: Staff Report for PRC Case 129 W Franklin St - Feb 2021

Background Information – Outside Storage Violation

In the summer of 2020 staff started to receive complaints regarding shingles being stored outside the front of the building located at 129 W. Franklin Street. The shingles appeared on the property around July of 2020. In hopes that the owner/tenant were repairing the roof, staff held off on sending any notice of violation related to the complaints received.

By October, when construction had not yet happened, staff spoke with Rick Martin, who had been the city's most recent point of contact for the property, regarding the shingles being stored outside. Staff had a phone conversation with Mr. Martin and asked that the shingles be moved to the rear of the property to screen them from view or be moved somewhere else. Mr. Martin seemed agreeable and indicated moving the shingles would be likely to happen.

The following week Mr. Martin called back stating that they were going to begin construction on the roof at the beginning of November and asked for an extension on moving the shingles. Staff agreed, but since the materials had already been there for several months, staff also sent a Notice of Violation on October 30 as a precaution in case construction never began.

Violation Appeal

On November 19, 2020 staff received an appeal via fax from the appellant's attorney regarding the violation notice. The appeal was received on the 20th day after the violation and within the allowable appeal time frame per code.

The case was set to go before the BZA/PRC meeting in December and was scheduled. The appellant's attorney notified us via email on December 9th of 2020 that they wanted to postpone to January of 2021.

The appellant's attorney then notified us again on January 13th, 2021 wishing to reschedule a second time stating that the appellant was at a hearing in Kentucky at that time.

On February 8th as staff was preparing for the BZA/PRC agenda we became aware that no one had contacted us to reschedule the hearing. Staff then reached out to the appellant via email and have received no response to date.

Appeal Process

Section 20.12.1 Administrative Review

*“Appeals will be heard and decided only in such cases where it is alleged there is an error in any order, requirement, decision or determination made by the enforcing officer in the enforcement of this ordinance. Appeals may be taken by any person aggrieved or by any officer of the City affected by any decision of the enforcing officer. **Such appeal shall be taken within twenty (20) days after the decision.** The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the enforcing officer, or to decide in favor of the applicant on any matter upon which they are required to pass under the terms of this ordinance.”*

The current code affords an appeal to be made within 20 days of a decision. In this case, the notice was issued on October 30, 2020 and the appeal was received by the appellant’s attorney via fax on November 19, 2020. The notice of appeal was received on the 20th day and within the allowance of the code.

However, the appellant requested extension of the hearing on two occasions which delayed the original hearing in December and again in January. We are now three months past the original appeal and the appellant has not responded or indicated that they will be attending a hearing this month as of this report when asked via email. There are no provisions in the code for extension of hearing and the extension requests were granted out of courtesy.

Appellant Information

Property Location:
129 W. Franklin St.
Bellbrook, OH 45305

Legal Property Owner per Greene County Auditor’s Office:
LAK Enterprises III LLC
PO BOX 317 Spring Valley, OH 45370

Appellant
L&L Diversified Development (John Landsiedel)

Attorney
Adams James Stout
5335 Far Hills Ave, Ste 109
Dayton, OH 45429

Current Zoning District

B-4, Central Business District / Old Village District

Parcel Identification

Parcel ID # L35000100020012700 and L35000100020004700



Figure 1 Property Map

Violation Issued

1450.31(j) Outside Storage. In residential zones, all outdoor storage shall be effectively screened from view and storage of miscellaneous items must be within enclosed structures or screened as required in the Zoning Code. No person shall accumulate, cause to be accumulated, or allow to be accumulated junk upon any property located within the City.

Action Requested and Potential Repercussions

The below was sent to the legal property owner per Greene County as well as two other individuals who we have regularly corresponded with regarding the property:

Please take the following action(s) by 11/13/2020 to avoid progression in the case:
- Place outdoor storage in an enclosed structure, place items in the rear of property and appropriately screen them from view and the elements or remove them from the property altogether.

If work has not begun or the items have not been moved to resolve the above said violation by the end of the week of 11/13/2020-11/20/2020, penalties will be charged at \$25.00 per day, per violation or \$250.00 total per violation. For more information on penalties, please refer to section 1450.99 of the Property Maintenance Code. If penalties are assessed, you will receive an invoice from the city payable in 30 days. If the invoice is not paid in full the city has the right to file a lien on the property. If the violation is resolved during the penalty period (10-day timeframe after action date) please contact me immediately to conduct an inspection of property.

Surrounding Land Use/Zoning within 1,000 Feet

The land surrounding the subject property is zoned as B-4 Central Business District. Outside of W Franklin Street, the land predominantly becomes single or multifamily residential.

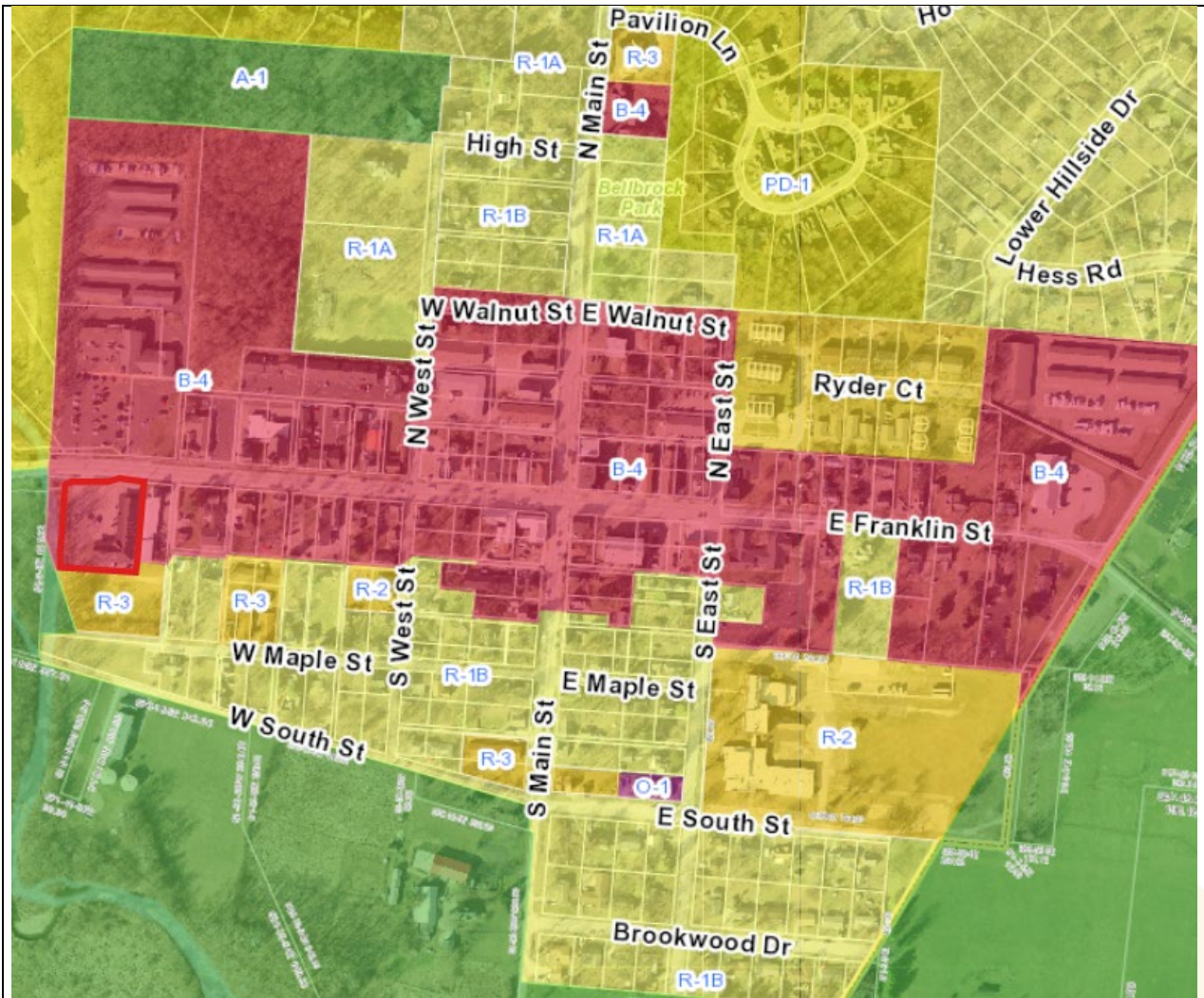


Figure 2 Zoning

Previous Violations

2018: Sidewalks, Driveways, Outside Storage, Garbage and Rubbish Containers, Protective Treatment, Exterior Walls, Roofs and Drainage, Maintenance of Signs. (many of which are still outstanding and were put on hold due to apparent transition of property that occurred in 2020)

2015: Temporary Sign

2014: Temporary Sign

Appeal Details Issued by Appellant's Attorney

The first argument that the attorney makes is that the code states that "Outside Storage" only applies in residential zones and that I stated that the parcel is in the B-4 Central

Business District when corresponding with Rick Martin. While there is validity in the statement that the parcel is located in the B-4 Central Business District, it is also located in the Old Village District which is a mixture of business and residential and is not exclusive to only business.

Furthermore the B-4 district states “12.02 PERMITTED PRINCIPAL USES: (1) Any generally recognized retail business, service establishments or processing uses as follows: (a) Those uses permitted in all residential districts.” By “residential” being a permitted principal use, it can be argued that B-4 is also a residential district, especially with the large number of homes in the district and adjacent to the property.

In the appeal the attorney states that 1450.30 of the code (“No person shall accumulate, cause to be accumulated, or allow to be accumulated junk upon any property located within the City.”) is vague in the way junk is defined and that the shingles are in fact not junk, but rather for future use. It should be noted that there is no specific definition for junk per code. However, Dictionary.com defines junk as:

“noun

(1) any old or **discarded material**, as metal, paper, or rags.

(2) anything that is regarded as worthless, meaningless, or contemptible; [trash](#).

verb (used with object)

to cast aside as junk; discard as no longer of use; [scrap](#).

adjective

cheap, worthless, unwanted, or trashy.”

The items found to be in violation have been left out since July of 2020. At this point the materials have been on the property, seemingly untouched for approximately seven months. Staff believes it is reasonable that based on the common definition above, these can be classified as a discarded material at this point. The intent of the section of code is not to define every item or material type but to simply ensure that the accumulation of materials or items do not become a blight on surrounding property owners.

The last argument in the appeal is that City staff do not identify L & L Diversified Development LLC as the owner of the property and instead we notify LAK Enterprises III LLC. LAK Enterprises is the last deeded owner according to the County Recorder’s Records and is also listed as the property owner on the County GIS. We have no record of L & L Diversified Development LLC being the owner, which is why we addressed the correspondence to LAK Enterprises in addition to the attention of Rick Martin and John Landsiedel. The last recorded deed is attached to this report for reference. Below is a screen shot of the online record from the County GIS.



Figure 3 Auditor's Information for Parcel On County GIS

Closing

Staff is requesting the PRC to deliberate and advise how they wish to move forward with this case. A violation was issued and since appealed. The appellant has failed to appear to the BZA/PRC hearing 3 times at this point.

To date, the materials are still on site in their original locations and we continue to receive complaints. Staff would recommend moving forward with the \$250.00 maximum fine as listed in the violation notice so the case can finally be resolved.

TRANSFERRED
FOR 300.00 B.C.C.

10 AUG 10 PH 2:05

836.00
FEE
LUDWIGIA A. CLAWAY
GREENE COUNTY RECORDER
2837

2010 AUG 11 AM 9:07
44-000
ERIC G. SEARS
GREENE CO. RECORDER
XENIA, OH

013652

GENERAL WARRANTY DEED*

CHARLES E. DICKERSON AND JANE M. DICKERSON, HUSBAND AND WIFE, THE GRANTORS, for valuable consideration paid, grants, with general warranty covenants, to LAK ENTERPRISES III, LLC, AN OHIO LIMITED LIABILITY COMPANY, whose tax-mailing address is 3080 Ackerman Blvd., Ste. 110, Kettering, Ohio 45429, the following REAL PROPERTY:

See attached Exhibit A hereto and made a part hereof.

PARCEL NO. L35-0001-0002-0-0127-00

Subject to taxes and assessments which are now or may hereafter become liens on said premises and except conditions and restrictions and easements, if any, contained in former deeds of record for said premises, subject to all of which this conveyance is made.

Prior instrument reference: Official Records Volume 883, Page 732 of the deed records of Greene County, Ohio. Executed this 6th day of August, 2010.

Charles E. Dickerson
CHARLES E. DICKERSON

Jane M. Dickerson
JANE M. DICKERSON

STATE OF OHIO,

COUNTY OF MONTGOMERY

SS:

The foregoing instrument was acknowledged before me this 6th day of August, 2010, by CHARLES E. DICKERSON, married to JANE M. DICKERSON, the Grantor in the foregoing instrument, who acknowledged the signing thereof to be HIS voluntary act and deed.



WILLIAM H. FRAPWELL, Attorney at Law
Notary Public, State of Ohio
My Commission Expires 10/03/12
Section 147.03 O.R.C.

William H. Frapwell
Notary Public

This instrument prepared by: WILLIAM H. FRAPWELL, ATTORNEY AT LAW

*See Sections 5302.05 and 5302.06 Ohio Revised Code

WL 3043 PG 53

8
118.00

From: [Jessica Hansen](#)
To: [Pamela Timmons](#)
Subject: FW: 129 W Franklin St
Date: Tuesday, February 9, 2021 3:25:00 PM
Attachments: [Violation Notice 129 W Franklin St 10-30-2020.pdf](#)
[image002.png](#)

From: Jessica Hansen
Sent: Friday, October 30, 2020 4:18 PM
To: Richard A Martin <MartinRick@msn.com>; jhlandsiedel@gmail.com; Greg Dart <gldarta1@yahoo.com>; chad@kuhnsgruopinc.com
Cc: Melissa Dodd <M.Dodd@cityofbellbrook.org>
Subject: 129 W Franklin St

Rick,

Per our conversation we can allow work to begin on the property the beginning of November. As an assurance on our part however, I have attached a notice to this email that outlines the details and repercussions if no such work were to begin or the items were not moved at all. Should work begin, and/or the items be moved simply disregard the notice.

Thanks,

I hope you all have a great weekend and a Happy Halloween!

Jessica Hansen
Planning & Zoning Assistant
City of Bellbrook
(937) 848-4666
jessica@cityofbellbrook.org





October 30, 2020

LAK Enterprises III LLC (Owner listed on County GIS)

Attn:

Rick Martin/John Landsiedel

129 W Franklin St,

Bellbrook, Ohio 45385

City of Bellbrook

15 E. Franklin Street

Bellbrook, Ohio 45305

T (937) 848-4666

F (937) 848-5190

www.cityofbellbrook.org

Notice of Property Maintenance Violation

This letter is to inform you of a complaint we have received regarding your property. The complaint was related to the belongings being stored outside on your property— more specifically the roofing materials that have been in front of the property for numerous months. As previously discussed over phone conversations the roofing materials may stay outside **IF** work starts around the first week of November. If work does not start the materials need to be moved into an enclosed structure, placed in the rear of the property and appropriately screened from view, or removed from the property altogether.

We want to work with you to help correct the situation and we also realize the work you are trying to put into the structure.

Please take the following action(s) by 11/13/2020 to avoid progression in the case:

- Place outdoor storage in an enclosed structure, place items in the rear of property and appropriately screen them from view and the elements or remove them from the property altogether.

1450.31(j) Outside Storage. *In residential zones, all outdoor storage shall be effectively screened from view and storage of miscellaneous items must be within enclosed structures or screened as required in the Zoning Code. No person shall accumulate, cause to be accumulated, or allow to be accumulated junk upon any property located within the City.*

If work has not begun or the items have not been moved to resolve the above said violation by the end of the week of 11/13/2020-11/20/2020, penalties will be charged at \$25.00 per day, per violation or \$250.00 total per violation. For more information on penalties, please refer to section 1450.99 of the Property Maintenance Code. If penalties are assessed, you will receive an invoice from the city payable in 30 days. If the invoice is not paid in full the city has the right to file a lien on the property. If the violation is resolved during the penalty period (10-day timeframe after action date) please contact me immediately to conduct an inspection of property.

Again, if you need assistance in this, please let us know and we would be happy to organize volunteers. If you have any questions or concerns, please feel free contact me. I can be reached at **937-848-4666** or by email at jessica@cityofbellbrook.org.

Thank you for your assistance on this matter,

Jessica Hansen
Planning and Zoning
City of Bellbrook

1450.99 VIOLATIONS: LEGAL AND EQUITABLE REMEDIES.

(a) Unlawful Acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Code.

(b) Any person failing to comply with a notice of violation or order served in accordance with this Code shall be deemed guilty of a misdemeanor of the fourth degree and shall not be fined more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both, and the violation shall be considered a strict liability offense.

(c) If the notice of violation is not complied with, the Code Official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Code or of the order or direction made pursuant thereto.

(d) Any action taken by the City on such premises shall be charged against the real estate upon which the structure is located and shall be certified to the County Auditor for collection, the same as other taxes and assessments are collected.

(e) A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

(f) Nothing herein contained shall prevent the City from taking such other lawful action as necessary to prevent or remedy any violation.

1450.16 MEANS OF APPEAL.

(a) Application for Appeal. Any person directly affected by a decision of the Code Official or a notice or order issued under this Code shall have the right to appeal to the Bellbrook Property Review Commission (BPRC), provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code do not fully apply, or the requirements of this Code are adequately satisfied by other means.

(b) Open Hearing. All hearings before the BPRC shall be open to the public. The appellant, the appellant's representative, the Code Official and any person whose interests are affected shall be given the opportunity to be heard.

(c) BPRC Decision. The BPRC shall hear all appeals relative to the enforcement of this



Code, and by a concurring vote of the majority of its members may reverse or affirm wholly or partly, or may modify, the decision appealed from, and shall make such order or determination as /in its opinion ought to be made. Failure to secure.

City of Bellbrook

15 E. Franklin Street
Bellbrook, Ohio 45305

T (937) 848-4666

F (937) 848-5190

www.cityofbellbrook.org





City of Bellbrook

15 E. Franklin Street
Bellbrook, Ohio 45305

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www.cityofbellbrook.org

November 12, 2020

Owners and Agents of Property
129 West Franklin Street
Bellbrook, Ohio 45305

Dear Owners and Agents:

I understand there has been transition with the 129 West Franklin Street property. In the transition there has been exterior and interior work that appears to be in progress. I am personally thankful there is progress being made with the building and am anxious to see the finished results.

With that being said, we all need to be on the same page in terms of any approvals and processes that need to be complied with in the renovation and subsequent operation of any additional businesses. It appears from social media postings there is at least one additional business operating out of the space (art class business in unit 151) for which we do not have a permit for.

It is imperative that we are all on the same page in terms of any additional business operations in the space. I am requesting a meeting to discuss this so that I can provide you with information to legally continue to operate. There are processes in place that need to be followed to avoid violations and penalties and a conversation needs to happen to ensure these are complied with.

We have also received complaints about the property and the storage of items on the parking lot. We have already discussed the roofing materials but want to stress that this needs to be resolved as previously discussed.

Please contact me with dates and times you are available to discuss the above by November 20, 2020.

Sincerely,

Jessica Hansen
Planning and Zoning Assistant

Cc: Melissa Dodd, City Manager

Adam James Stout, Esq.

5335 Far Hills Avenue, Ste 109 ~ Dayton, Ohio 45429
937-293-1911
Fax: 293-2518

FAX TRANSMISSION SHEET

TO: Bellbrook
~~Property~~ Property Review Commission

FROM: Adam Stout

DATE: 11-19-20

CLIENT: L&L Diversified Development LLC 1
Re 129 W Frankling St.

FAX: 937 848 5190

NO OF PAGES: 11

NOTES:

The attached document is CONFIDENTIAL. Should you receive this facsimile transmission error, please do not read or review. Contact the above listed office IMMEDIATELY.

Adam James Stout, Esq.

5335 Far Hills Ave., Ste 109

Dayton, OH 45429

Tel: (937) 293-1911

Fax: (937) 293-2518

November 19, 2020

Via Hand Delivery and Facsimile: (937) 848 5190

Meredith Glick Brinegar, Chair
City of Bellbrook
Property Review Commission
15 E. Franklin Street
Bellbrook, OH 45305

Ms. Jessica Hansen
City of Bellbrook
Planning and Zoning Assistant
15 E. Franklin Street
Bellbrook, OH 45305

RE: Appeal of 129 West Franklin St., Bellbrook, OH 45305

Ms. Hansen, Ms. Brinegar:

I have been retained by L & L Diversified Development, LLC, the owner of 129 W. Franklin St., regarding the October 30, 2020 Notice of Property Maintenance Violation issued by the pertaining to the property located at 129 West Franklin Street, Bellbrook, OH 45305. (Attached as Exhibit "A".) We hereby Appeal the City's Notice of Violation to the Bellbrook Property Review Commission and request a hearing on the matter. An Application of Appeal is attached.

We Appeal the City's Determination that the presence of packaged roofing material's on the premises violates §1450.31(j) absent covering or concealment or removal.

Please timestamp and file this request with the Bellbrook Property Review Commission's file.

Please contact as to any additional procedures or forms you need from us.

Best Regards,



Adam James Stout, Esq.

Enclosure

IN THE BELLBROOK PROPERTY REVIEW COMMISSION

<p>In Re: L&L Diversified Development, LLC</p> <p>Property:</p> <p>129 W. Franklin St. Bellbrook, OH 45385</p>	<p>Application for Appeal of Notice of Property Maintenance Violation</p>
--	--

TO:

Meredith Glick Brinegar, Chair
City of Bellbrook
Property Review Commission
15 E. Franklin Street
Bellbrook, OH 45305

Ms. Jessica Hansen
City of Bellbrook
Planning and Zoning Assistant
15 E. Franklin Street
Bellbrook, OH 45305

L & L Diversified Development hereby Appeals to the Bellbrook Property Review Commission the City’s Notice of Property Maintenance Violation dated October 30, 2020 (Attached as Exhibit “A”) for the following reasons.

The City issued a Notice of Property Maintenance Violation on the above property alleging that roofing materials are present on the property. The Notice alleged that the presence of said materials violated §1450.31(j) of the Bellbrook Municipal Code. Further, the Notice proposed that it could be remedied if the materials were moved into an enclosed structure, screened from view, removed or if construction or remediation occurred on the first week of November.

Pursuant to the City of Bellbrook Municipal Code § 1450.16. "Any person directly affected by a decision of the Code Official or a notice or order issued under this Code shall have the right to appeal to the Bellbrook Property Review Commission (BPRC), provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code do not fully apply, or the requirements of this Code are adequately satisfied by other means" L. and L. Diversified Development, Llc, hereby Appeals the October 30th, 2020 Notice of Property Maintenance Violation regarding outside storage at 129 W. Franklin Street, Bellbrook, OH 45305 for the following reasons:

1. The City incorrectly interprets §1450.31(j) when applying the ordinance to whether the condition of the property violates the ordinance. The first portion of §1450.31(j) Outside Storage clearly states that the requirement to cover or conceal outside storage applies only "in residential zones". The district that 129 W. Franklin Street is located in is "B-4 Central Business District," which provide for a variety of commercial uses, including the current uses of the property in question. In Ms. Jessica Hansen's own words (See Exhibit B – Email from Jessica Hansen to Richard Martin on 11/10/20), the property is in the Central Business District. Further, city also imposed an arbitrary deadline to begin additional work on the property to remedy the alleged violation. (See Exhibits A & C.) Neighboring commercial properties in the central business district also have additional items that are exposed to public view that are not screened off.

2. Furthermore, the second sentence of §1450.31(j) state that "No person shall accumulate, cause to be accumulated, or allow to be accumulated *junk* upon any property located within the City." This provision does not apply to the roofing material on the property, because of the vagueness of the word *junk* and that the materials are being used for future remediation of the property as noted the Notice of Property Maintenance Violation. Further, the materials in questioned are neatly and orderly stacked on several pallets and do not make the property look unsightly or disordered.

3. The Notice of Violation does not identify L & L Diversified Development LLC as the owner of the property. Pursuant to §1450.21. - *Owner*. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court. L & L Diversified Development LLC is the Vendee in Possession of 129 W. Franklin St. property. Instead, the City's Notice identifies the company LAK Enterprises III LLC. As a result, the Notice of Property Maintenance is not sufficient to notify the property owner of a violation and impose a civil fine on the owner.

Consequently, we respectfully request that the City's Notice of Property Maintenance Violation be reversed, lifted and vacated. We further request a hearing on the matter.

Respectfully submitted,



Adam James Stout, Esq. (0080334)
Counsel for L & L Diversified Development LLC
5335 Far Hills Ave., Ste 109
Dayton, OH 45429
Tel: (937) 293-1911
Fax: (937) 293-2518



October 30, 2020

LAK Enterprises III LLC (Owner listed on County GIS)
Attn:
Rick Martin/John Landsiedel
129 W Franklin St,
Bellbrook, Ohio 45385

City of Bellbrook
15 E. Franklin Street
Bellbrook, Ohio 45305
T (937) 848-4666
F (937) 848-5190
www.cityofbellbrook.org

Notice of Property Maintenance Violation

This letter is to inform you of a complaint we have received regarding your property. The complaint was related to the belongings being stored outside on your property-- more specifically the roofing materials that have been in front of the property for numerous months. As previously discussed over phone conversations the roofing materials may stay outside IF work starts around the first week of November. If work does not start the materials need to be moved into an enclosed structure, placed in the rear of the property and appropriately screened from view, or removed from the property altogether.

We want to work with you to help correct the situation and we also realize the work you are trying to put into the structure.

Please take the following action(s) by 11/13/2020 to avoid progression in the case:

- Place outdoor storage in an enclosed structure, place items in the rear of property and appropriately screen them from view and the elements or remove them from the property altogether.

1450.31(j) Outside Storage. In residential zones, all outdoor storage shall be effectively screened from view and storage of miscellaneous items must be within enclosed structures or screened as required in the Zoning Code. No person shall accumulate, cause to be accumulated, or allow to be accumulated junk upon any property located within the City.

If work has not begun or the items have not been moved to resolve the above said violation by the end of the week of 11/13/2020-11/20/2020, penalties will be charged at \$25.00 per day, per violation or \$250.00 total per violation. For more information on penalties, please refer to section 1450.99 of the Property Maintenance Code. If penalties are assessed, you will receive an invoice from the city payable in 30 days. If the invoice is not paid in full the city has the right to file a lien on the property. If the violation is resolved during the penalty period (10-day timeframe after action date) please contact me immediately to conduct an inspection of property.

Again, if you need assistance in this, please let us know and we would be happy to organize volunteers. If you have any questions or concerns, please feel free contact me. I can be reached at 937-848-4666 or by email at jessica@cityofbellbrook.org.

Thank you for your assistance on this matter,

Jessica Hansen
Planning and Zoning
City of Bellbrook

1450.99 VIOLATIONS; LEGAL AND EQUITABLE REMEDIES.

- (a) Unlawful Acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Code.*
- (b) Any person failing to comply with a notice of violation or order served in accordance with this Code shall be deemed guilty of a misdemeanor of the fourth degree and shall not be fined more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both, and the violation shall be considered a strict liability offense.*
- (c) If the notice of violation is not complied with, the Code Official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Code or of the order or direction made pursuant thereto.*
- (d) Any action taken by the City on such premises shall be charged against the real estate upon which the structure is located and shall be certified to the County Auditor for collection, the same as other taxes and assessments are collected.*
- (e) A separate offense shall be deemed committed each day during or on which a violation occurs or continues.*
- (f) Nothing herein contained shall prevent the City from taking such other lawful action as necessary to prevent or remedy any violation.*

1450.16 MEANS OF APPEAL.

- (a) Application for Appeal. Any person directly affected by a decision of the Code Official or a notice or order issued under this Code shall have the right to appeal to the Bellbrook Property Review Commission (BPRC), provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code do not fully apply, or the requirements of this Code are adequately satisfied by other means.*
- (b) Open Hearing. All hearings before the BPRC shall be open to the public. The appellant, the appellant's representative, the Code Official and any person whose interests are affected shall be given the opportunity to be heard.*
- (c) BPRC Decision. The BPRC shall hear all appeals relative to the enforcement of this*



Code, and by a concurring vote of the majority of its members may reverse or affirm wholly or partly, or may modify, the decision appealed from, and shall make such order or determination as /in its opinion ought to be made. Failure to secure.

City of Bellbrook
15 E. Franklin Street
Bellbrook, Ohio 45305

T (937) 848-4666
F (937) 848-5190

www.cityofbellbrook.org

E V B

From: Jessica Hansen <jessica@cityofbellbrook.org>
Sent: Tuesday, November 10, 2020 2:16 PM
To: Richard A Martin <martinrick@msn.com>
Cc: Melissa Dodd <M.Dodd@cityofbellbrook.org>
Subject: RE: 129 W Franklin St

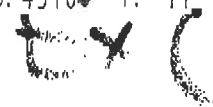
Rick,

Attached is the code for the B-4 district as well. Coincidentally enough I was drafting a letter this morning to send to you guys regarding the restoration of the building and the opening of new businesses. I just wanted to give you a heads up to be expecting that. We really appreciate what you guys are doing with the place, as it was in a state of disrepair not even that long ago. I'll likely get that out today or Thursday since tomorrow is Veteran's day.

I hope all is well.

Thanks,

Jessica Hansen



From: Richard A Martin <martinrick@msn.com>
Sent: Tuesday, November 10, 2020 12:16 PM
To: Jessica Hansen <jessica@cityofbellbrook.org>; jhlandsiedel@gmail.com; Greg Dart <gldarta1@yahoo.com>;
chad@kuhnsgruopinc.com
Cc: Melissa Dodd <M.Dodd@cityofbellbrook.org>
Subject: Re: 129 W Franklin St

Hello Jessica,

Just a quick question. What is the zoning classification for 129 W. Franklin St?

Thanks in advance.

Sincerely,

Rick Martin

From: Jessica Hansen <jessica@cityofbellbrook.org>
Sent: Friday, October 30, 2020 4:18 PM
To: Richard A Martin <MartinRick@msn.com>; jhlandsiedel@gmail.com <jhlandsiedel@gmail.com>; Greg Dart <gldarta1@yahoo.com>; chad@kuhnsgruopinc.com <chad@kuhnsgruopinc.com>
Cc: Melissa Dodd <M.Dodd@cityofbellbrook.org>
Subject: 129 W Franklin St

Rick,
Per our conversation we can allow work to begin on the property the beginning of November. As an assurance on our part however, I have attached a notice to this email that outlines the details and repercussions if no such work were to begin or the items were not moved at all. Should work begin, and/or the items be moved simply disregard the notice.

Thanks,

I hope you all have a great weekend and a Happy Halloween!

Jessica Hansen
Planning & Zoning Assistant
City of Bellbrook
(937) 848-4666
jessica@cityofbellbrook.org



From: [Adam James Stout](#)
To: [Pamela Timmons](#)
Subject: RE: PRC Appeal 129 W Franklin
Date: Wednesday, December 9, 2020 4:03:40 PM
Attachments: [image001.png](#)

Pam:

Following up on our conversation on Monday about rescheduling the appeal on 129 W Franklin to January, 2021 meeting.

Adam

Adam James Stout, Esq.
5335 Far Hills Ave., Ste 109
Dayton, OH 45429
(937)-293-1911

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From: Pamela Timmons [mailto:P.Timmons@cityofbellbrook.org]
Sent: Friday, November 20, 2020 11:36 AM
To: Adam Stout Esq (stoutadam@netscape.net)
Cc: Melissa Dodd; Jessica Hansen
Subject: PRC Appeal 129 W Franklin

Mr. Stout,

I am replying to inform you that the City of Bellbrook has received your communication.

First, I am requesting that you correspond with the City by other means than just facsimile. Due to the COVID-19 pandemic, staff is working remotely and so a fax may not be received in a timely manner. Email and U.S. Postal are the best forms of communication.

The next meeting of the Property Review Commission is on December 15 at 6:00 PM.

Please direct replies to my email at p.timmons@cityofbellbrook.org.

Sincerely,
Pamela Timmons
Clerk of Council
City of Bellbrook
15 E. Franklin Street

Bellbrook, OH 45305

P: 937-848-4666



Virus-free. www.avast.com

From: [Jessica Hansen](#)
To: [Cheri Hathaway](#); jhlandsiedel@gmail.com
Cc: [Greg Dart](#); [Pamela Timmons](#)
Subject: RE: Zoning Permit
Date: Monday, February 8, 2021 10:29:10 AM

Hello,

We were starting to prepare packets for BZA/PRC when I realized I still haven't heard from you regarding your appeal for the outside storage violation at 129 W. Franklin St. I was wondering if you will be attending the meeting next week? Additionally, we have still never received the information I had requested regarding the sign at 15 W Franklin St. to move forward with the VRB. I believe I needed the height of the sign from the sidewalk to the bottom of the sign and the content of the sign including a rendering. If you still want to move forward with this sign permit, please let me know.

Thanks,
Jessica Hansen

From: Cheri Hathaway <cherih77@yahoo.com>
Sent: Thursday, December 3, 2020 2:04 PM
To: Jessica Hansen <jessica@cityofbellbrook.org>
Subject: Zoning Permit

Hello Jessica,

Attached is our application for Zoning Permit for L&L Diversified Development at 129 E Franklin St Unit 151. Please let me know if there is anything else you need to get the ball rolling.

I look forward to speaking with you!

Sincerely,

Cheri Hathaway

cherih77@yahoo.com

129 W Franklin
2/12/21



Zoning Ordinance on Appeals Process:

20.06 BOARD OF ZONING APPEALS CREATED:

A Board of Zoning Appeals shall be created in accordance with Sections 8.05 and 8.06 of Bellbrook Charter. The Board of Zoning Appeals shall elect its own officers annually. Three (3) members of the Board of Zoning Appeals shall constitute a quorum for the conducting of business. It shall require a majority of votes to pass a motion or take official action.

20.07 DUTIES OF THE BOARD OF ZONING APPEALS:

In exercising its duties the Board may, as long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Zoning Inspector from whom the appeal is taken. The majority of votes of the sitting Board shall be necessary to reverse any order, requirements, decision or determination of the Zoning Inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to affect any variation in the application of this ordinance. For the purpose of this ordinance the Board has the following specific responsibilities:

- (1) Administrative review;
- (2) Determination of district boundary location;
- (3) Granting conditional use permits; and
- (4) Authorizing variances

20.08 PROCEEDINGS OF THE BOARD OF ZONING APPEALS:

The Board shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The Chairman, or in his absence the acting chairman, may compel the attendance of witnesses. Oral testimony given as evidence must be given under oath. Oaths will be administered by a notary public. All meetings shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each appeal considered by the Board, and the section of this ordinance where applicable which the Board has considered in approving or disapproving any petition or other matter brought before the Board, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board. The official copy of the minutes of all proceedings will be signed by the Board Chairman and Secretary.

20.09 HEARING OF BOARD OF ZONING APPEALS:

The Board of Zoning Appeals shall fix a reasonable time not to exceed 30 days from receipt of application, petition or appeal, for the hearing. Application, petition or appeal shall be filed with the Zoning Inspector at least five days prior to the next regularly scheduled meeting. The Board shall give at least ten (10) days notice of the time and place of such hearing, to the enforcing officer, and to the owners of record of property within three hundred (300) feet of the premises in question, such notice to be delivered personally or by mail addressed to the respective owners at the address given on the last assessment roll. Any party may appear at such hearing in person, by agent or by attorney. Before holding the public hearing, notice of such hearing shall be posted in full in not less than five (5) of the most public places in the municipality as determined by Council at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed hearing.

20.10 ACTION BY THE BOARD OF ZONING APPEALS:

Within thirty (30) days after a public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions or disapprove the request or application before the Board. If an application for conditional use is approved or approved with modifications, the Board shall direct the Zoning Inspector to issue the conditional use permit listing the specific conditions specified by the Board for approval. Appeals from Board decisions shall be made in the manner specified in Section 20.11.

20.11 DUTIES OF ZONING INSPECTOR, BOARD OF ZONING APPEALS, LEGISLATIVE AUTHORITY AND COURTS ON MATTERS OF APPEAL:

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Inspector, and that such questions shall be presented to the Board only on appeal from the decision of the Zoning Inspector, and that recourse from the decisions of the Board shall be to the courts as provided by law. It is further the intent of this ordinance that the duties of the City Council in connection with this ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this ordinance. Under this ordinance the City Council shall have only the duties of considering and adopting or rejecting proposed amendments or the repeal of this ordinance as provided by law, and of establishing a schedule of fees and charges as stated in Ordinance No. 75-1. Nothing in this ordinance shall be interpreted to prevent any official of the City from appealing a decision of the Board to the courts as provided in Chapters 2505 and 2506 of the Ohio Revised Code. Any such appeal shall be made within ten (10) days of the Board's written decision.

20.12 PROCEDURES AND REQUIREMENTS FOR ADMINISTRATIVE REVIEW:

Administrative reviews shall conform to the procedures and requirements of Sections 20.06 through 20.12 of this ordinance. As specified in Section 20.07, the Board of Zoning Appeals has appellate jurisdiction relative to administrative reviews.

20.12.1 ADMINISTRATIVE REVIEW:

Appeals will be heard and decided only in such cases where it is alleged there is an error in any order, requirement, decision or determination made by the enforcing officer in the enforcement of this ordinance. Appeals may be taken by any person aggrieved or by any officer of the City affected by any decision of the enforcing officer. Such appeal shall be taken within twenty (20) days after the decision. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the enforcing officer, or to decide in favor of the applicant on any matter upon which they are required to pass under the terms of this ordinance.

20.12.2 STAY OF PROCEEDINGS:

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Inspector from whom the appeal is taken certifies to the Board of Zoning Appeals after the notice of appeal is filed with him, that by reason of facts stated in the application, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Zoning Appeals or by a court of record on application, on notice to the Zoning Inspector from whom the appeal is taken on due cause shown.

Property Maintenance Code on Appeals:

1450.16 MEANS OF APPEAL.

(a) Application for Appeal. Any person directly affected by a decision of the Code Official or a notice or order issued under this Code shall have the right to appeal to the Bellbrook Property Review Commission (BPRC), provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this Code do not fully apply, or the requirements of this Code are adequately satisfied by other means.

(b) Open Hearing. All hearings before the BPRC shall be open to the public. The appellant, the appellant's representative, the Code Official and any person whose interests are affected shall be given the opportunity to be heard.

(c) BPRC Decision. The BPRC shall hear all appeals relative to the enforcement of this Code, and by a concurring vote of the majority of its members may reverse or affirm wholly or partly, or may modify, the decision appealed from, and shall make such order or determination as in its opinion ought to be made. Failure to secure such concurring votes shall be deemed a confirmation of the decision of the Code Official.

(d) Official Records. An official record shall be kept of all business and activities of the BPRC.