



MINUTES OF JULY 1, 2025
BOARD OF ZONING APPEALS MEETING

I. Opening of Meeting

Chairman McGuinness opened the Clayton Board of Zoning Appeals meeting that convened at 7:00 PM on Wednesday, July 1, 2025.

Chairman McGuinness administered the Oath of Office to new Board Michael Greer.

II. Members in Attendance

Mr. Bob McGuinness, Ms. Ashley Caldwell, Mr. Bob Madewell, Mr. Robert Pahren and Mr. Michael Greer. Ms. Ellen Snyder, Zoning and GIS Manager

III. Meeting Procedure and Oath

Mr. McGuinness explained the meeting procedures and administered the Oath to members of the public who wish to speak this evening.

IV. Minutes of the Previous Meetings

Mr. McGuinness presented the minutes of the May 7, 2025, Board of Zoning Appeals meeting, asking if there were any comments or changes. Hearing none, Mr. McGuinness asked for a motion to approve the minutes as presented. Motion to approve the minutes of May 7, 2025, was made by Mr. Pahren, second by Ms. Caldwell. Voting: Mr. McGuinness-yes, Ms. Caldwell-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-abstain. Motion passed 4-0 with one abstention.

V. Old Business

None

VI. New Business

AA25-01 A request for an administrative appeal to the Zoning Administrator's decision to revoke ZC#2024230 for property M60103209 0044, commonly known as 6070-6090 Taywood Road in the City of Clayton, Montgomery County, State of Ohio. The request was made by Sandy K. Green/Green Acre Labs LLC

Ellen Snyder, Planning and GIS Manager, advised I don't have a presentation for you this evening because there is a recommendation to table this case. On May 28, 2025, staff received an administrative appeal application from Sandy Green of Greenacre Labs LLC tenant of the property at 6070 to 6090 Taywood Road. The appeal challenges the May 8, 2025 decision by the Zoning Administrator to revoke zoning certificate 2024230 originally issued on July 25, 2024 for an indoor boarding/kennel use. The revocation was issued on the basis of material misrepresentation and non-disclosure in the original zoning certificate application.

Mr. McGuinness advised Board members received an email from the city's attorney, stating the parties are working on a resolution and feel tabling the matter would be appropriate at this time



to allow additional time to work on a resolution. Since they are in legal discussions at this point I see no reason to continue to vet this case.

Mr. McGuinness asked for a motion to table this appeal. Motion by Mr. Madewell to table this administrative appeal, motion was seconded by Ms. Caldwell. Voting: Mr. McGuinness-yes, Ms. Hunter-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-yes. Motion passed 5-0.

Mr. McGuinness advised Administrative Appeal AA2501 is tabled to be brought up when resolution or decisions have been made.

VAR25-04 A request for a variance to Section 1121.03.f of the Clayton Planning and Zoning Code, specifically requesting to be permitted to park a trailer in the front of a home, for property M60 03210 0206, commonly known as 6644 Garber Road in the City of Clayton, Montgomery County, State of Ohio. The request was made by Tim Philpot, part property owner.

Ellen Snyder, Planning and GIS Manager, advised Application VAR25-04 was received on June 6, 2025 and the applicant is Tim Philpot, part property owner. The request is for a variance to the Generally Applicable Regulations Section of the Clayton Planning and Zoning Code, specifically the request is for the parking of a trailer in the front of a home. The subject property is commonly known as 6644 Garber Road, parcel M60 03210 0206, consists of an area of 1.0768 acres, and is currently zoned RSD, Residential Single Unit District. Notices to property owners within 300 feet of the subject property were postmarked and sent on June 16, 2025, additionally a public notice was printed in the Eaton Register Herald on June 18, 2025. Ms. Snyder then shared images of the general and specific location of this request. The applicant desires to park a trailer in front of the home within the boundaries of the subject property. The requested variance is from section 1121.03 of the Clayton Planning and Zoning Code Section 1121.03(f): "If camping, recreational equipment or trailers are parked or stored outside of a garage, they shall be parked or stored no closer to the street than the nearest foundation line of the residence and shall be parked on a hard dustless surface." The Code does not permit trailers to be stored forward of the principal structure, except temporarily for loading or unloading per Section 1121.03(g), which allows such placement for up to 48 hours. The applicant received a Courtesy Notice on March 10, 2025. A Notice of Violation followed on March 26, 2025 and a Final Notice followed on April 9, 2025. The applicant subsequently ceased parking the trailer in the unpermitted area, and the violation was officially closed on April 15, 2025. The trailer was later observed parked in the same unpermitted location, resulting in another Notice of Violation issued on May 21, 2025. Staff has had several discussions with the applicant regarding regulations for the trailer storage and parking, where staff informed Mr. Philpot of two alternative options: initiating a legislative amendment by working with members of City Council and Planning Commission, or pursuing an administrative appeal upon receipt of a formal Notice of Violation. Mr. Philpot acknowledges that staff's interpretation of the current Code is correct but disagrees with the Code as written. Despite staff's explanation that this use does not appear to be eligible for a variance under the standards of Section 1141.07, the applicant has opted to proceed with a variance request. Staff is concerned that the Code explicitly prohibits trailer storage forward of the residential structure, the request appears to be a policy disagreement rather than a case of practical difficulty or exceptional circumstance, the property owner demonstrated the ability to comply with the Code when previously cited, and granting

this variance may set a precedent that conflicts with the City's standards for vehicle storage and neighborhood character. Our Code per Section 1141.07, a variance may only be granted when strict application of the Zoning Code would result in practical difficulties or unnecessary hardship due to: exceptional conditions of the property, conditions not self-created; that the variance is the minimum necessary; or that granting the variance will not adversely affect the public interest or general intent of the Code. After evaluating the applicant's request and the provisions of the Zoning Code, staff does not support the requested variance. The existing standards in Section 1121.03 clearly prohibit the requested storage location, and no unique hardship has been identified. This request does not meet the legal threshold required for the granting of a variance and may be more appropriately addressed through a legislative amendment or appeal.

Mr. McGuinness asked, do you know if anyone has reached out to City Council because that is how zoning is changed, it's not through us, we can't change zoning. One of our requirements is does this constitute a zoning change? And if it says no, then we say no because we can't do that. That's not in our purview, it's clearly stated there. It needs to go through Council, it needs to go through a review. Ms. Snyder advised, what would happen normally is if an applicant disagrees with the code as written, they would bring it to their council members. Those council members would bring it up during a council meeting and then staff would get notification at that point, and bring it to the Planning Commission. The Planning Commission would deliberate and decide and then make a recommendation to City Council for final a decision.

Hearing no further comments, Mr. McGuinness asked the applicant if they had anything to add.

Tim Philpot stated I respectfully request a zoning variance to allow continued parking of our utility trailer on my gravel driveway located in the front of our property. I'm requesting this because of practical difficulties in 1121.03. It's due to the size, shape, and the limitations of our property. A trailer has been parked in that exact location for 38 months prior to receiving a courtesy notice. I called Mr. Swafford and asked for clarity on the letter because he said someone had complained, a neighbor. I was told that no one had complained, he had seen it. The trailer is 142 feet from Garber Road, that's seven times greater than the minimum setback of 20 feet. 6644 Garber Road is zoned RSD, but it doesn't resemble any of the homes around there. It's 1.0768 acres, it's a wooded lot, it's long, it's narrow. The front of the home is 207 feet from Garber Road and has a circular driveway. The front setback from the home to the gravel driveway is 46 feet. There is limited access to the rear yard due to the width of the floor plan of the home compared to the width of the property. There is literally 4 feet on the north side, we can't put a gate for a chain link fence, on the south side it's a little wider, but the problem is there's a side load garage. We live in a wooded lot, for most of the year, seven, eight months, it's completely shielded from the street. We moved in December of 2021, and the trailer has been parked there for that amount of time. Based on our unique property we hope the Board understands this and based on our property's unique conditions with the surroundings, the practical difficulties make it impossible to park the trailer anywhere else.

Mr. McGuinness asked, this is a utility trailer, what do you use it for. Mr. Philpot advised where I live it's a tool rather than a luxury, I make multiple trips to the dump to get rid of yard waste.

Mr. McGuinness asked, how big is the trailer. Mr. Philpot advised it's 20 feet. Mr. McGuinness then asked is there any height to it? Mr. Philpot replied, no it's a high-side utility trailer.

Mr. McGuinness asked, have you thought of a possible accessory structure, and do you have any accessory structures on your lot. Mr. Philpot replied, I would rather not build one right now, but that is an option. If we were going to, it would have to be in the front of the property.

Mr. Greer asked, where is the trailer now? Mr. Philpot replied, it's at my business. Mr. Greer asked, is there a problem with leaving it at your business. Mr. Philpot replied, if I were to have it on my property for two weeks like I did, I would get cited again. I don't mind sometimes moving it off, but this time of year with the woods, we're constantly using it.

Mr. Madewell, can you please explain why we can't do this. Ms. Snyder advised, the crux of this case is that there's not a disagreement with the code as written. Staff is interpreting the code correctly and issuing violations as they're supposed to do. This isn't an appeal after an issuance of a notice of violation, it's a disagreement with how the code is written. We had discussions with Mr. Philpot and he wanted to come to council and make a special presentation. He had notified us that he was already in contact with a few council members and we very much encouraged him to continue urging his council members to bring this up so that staff could then bring something to the Planning Commission. But amendments to the planning code, that's not something that a constituent can bring to the Planning Commission. It has to come from staff or city council or some sort of agency within the city.

Mr. Pahren asked, what about the comment that there's no practical way of making it happen. Ms. Snyder advised, when I looked at the history of the property, the previous property owner did receive violations for trailer parking in the front as well. And then we've also seen the trailer in the aerial photography where it appears to be parked on the side by the garage when it was hooked up to a vehicle, so it seems like there's maybe some solutions here with parking it at the place of business. When you receive a violation, it's because it's been sitting there for over 48 hours.

Mr. McGuinness asked, why are we hearing a variance here instead of an administrative appeal. Ms. Snyder advised, it was suggested when we had discussions with Mr. Philpot, we urged him to either file for an appeal or continue working with city council members to bring change legislatively.

Mr. McGuinness asked, so this was at the request of the applicant. Ms. Snyder advised, correct.

Mr. McGuinness stated, even though we can't do it, we can't act on it. Ms. Snyder, replied, correct, the Board of Zoning Appeals doesn't have the authority to change zoning code or allow something that is inherently or outright not permitted.

Mr. Philpot advised, the reason I did file was after reaching out to two council members, I was advised to go to the Board of Zoning Appeals that is why I am here.

Mr. McGuinness advised, Ms. Snyder is absolutely correct, and as I mentioned in my opening statement, the reason we're here and the reason we have sworn testimony is because we're following the code and any change that does happen to the code does need to go through council, I appreciate your patience and your sense of humor.

Mr. McGuinness asked if we have any other input from neighbors or anything along those lines? Ms. Snyder advised just the one letter that was written and included in your staff packets.

Hearing no further comments, Mr. McGuinness asked for a motion to open the hearing for public comment. Motion by Mr. Madewell to open the hearing for public comments, motion was seconded by Mr. Greer. Voting: Mr. McGuinness-yes, Ms. Hunter-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-yes. Motion passed 5-0.

There was no one present to speak for or against this case, Mr. McGuinness asked for a motion to close the hearing for public comment. Motion by Mr. Madewell to close the hearing for public comments, motion was seconded by Mr. Greer. Voting: Mr. McGuinness-yes, Ms. Hunter-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-yes. Motion passed 5-0.

Mr. McGuinness asked the Board if they had any further comments. None were heard. Mr. Madewell read the Findings of Facts and the Board found this case does not meet the Standards for Variance listed in chapter 1141.07(A)(4) of the City of Clayton Planning and Zoning Code. Mr. Madewell made a motion to deny Variance VAR25-04, motion was second by Mr. Pahren. Voting: Mr. McGuinness-yes, Ms. Hunter-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-yes. Motion passed 5-0.

VAR25-05 A request for a variance to Section 1121.02.B.1.ii, iii, and vi of the Clayton Planning and Zoning Code, specifically requesting to be permitted to build an accessory dwelling unit which exceeds 1,559.55 SF in size and whose exterior finish materials will not match the exterior finish materials of the primary dwelling, for property M60 03205 0027, commonly known as 7338 Wastler Road in the City of Clayton, Montgomery County, State of Ohio. The request was made by Kyle Tipton, part property owner.

Ellen Snyder, Planning and GIS Manager, advised application VAR 25-05 was received on June 10, 2025, and the applicant is Kyle Tipton, part property owner. This request is for a variance to the Generally Applicable Regulations Section of the Clayton Planning and Zoning Code, specifically for the exterior finish materials to not match the finish materials of the primary dwelling unit, and for the size of the accessory dwelling unit to exceed the allowable limit of 1,529.55 square feet. The subject property is commonly known as 7338 Wastler Road, parcel M60 03205 0027, contains an area of 6.898 acres, and is currently zoned RCD-1, Rural Conservation District. Notice to property owners within 300 feet of the subject property were postmarked and sent on June 16, 2025, and a public notice was printed in the Eaton Register Herald on June 18, 2025. The proposed ADU involves converting a portion of an existing 40.5' by 120' accessory structure and constructing a new 471 sq ft addition, resulting in a total ADU size of 1,726 sq ft, as calculated by the applicant. Staff interprets the size of the ADU differently based on interior access to other parts of the structure. With either interpretation of size, the proposed square footage of the ADU exceeds the code's maximum allowable size. The applicant also requests a variance to allow exterior materials that do not exactly match the principal dwelling, proposing a contemporary finish distinct from the existing home's brick and siding. Ms. Snyder then shared images of the general and specific locations. The applicant desires to construct an accessory dwelling unit 1,726 square feet in size, which exceeds the permitted 1,559.55 square foot size, within the boundaries of the subject property. Staff considers the entire structure to be part of the ADU due to open interior access between the

proposed ADU space and the remaining structure. If the applicant wishes to define the ADU as only the converted and added space, interior access points must be removed to clearly separate the ADU from the rest of the building. The applicant's justification is that the site is large, 6.89 acres, and well-screened by mature trees, the structure already contains a conditioned living space well-suited for an ADU, and the added square footage enhances architectural compatibility and livability without impacting adjacent properties. The applicant desires to construct an accessory dwelling unit whose exterior finish materials do not match those of the primary dwelling unit within the boundaries of the subject property. Their justification is the existing accessory structure materials differ from the principal dwelling and are difficult to match, the proposed ADU finish is modern and high-quality, with plans to eventually update the primary home to coordinate, and the lot's size and mature trees fully screen the ADU, minimizing visual impact. Staff's is concerned the proposed ADU size exceeds code limits, and staff's interpretation includes the full structure unless internal access is removed. The existing structure's layout, pre-existing conditioned space, and the secluded nature of the property present unique circumstances, and the proposed finishes align with a modernized aesthetic and are screened from public view and neighbors. Ms. Snyder then shares images of the site plans. After evaluating the applicant's request and the provisions of the Zoning Code, staff recommends approval of the requests with the following conditions: the proposed architectural finishes shall match those shown in the submitted plans, the applicant must remove interior access to other parts of the structure if the reduced ADU square footage is to be recognized, and the ADU shall not be sold or conveyed separately from the primary residence.

Mr. McGuinness asked if the ADU is attached to the house. Ms. Snyder advised, the ADU would not be attached to the house, and what I identified on the plans is the only interior access point for the ADU or the renovation to the interior of the space to the rest of the existing accessory structure.

Mr. McGuinness asked does that meet building standards and fire codes? Ms. Snyder advised, it would need to be fire rated, especially if there is no access point there. That wouldn't be considered an emergency exit. We would leave that up to our building official in our building department to decide what that wall needs to be rated, but I believe it would just need to be a one-hour firewall rating. Mr. McGuinness asked what are the escape options. Ms. Snyder identified three access points.

Hearing no further comments, Mr. McGuinness asked the applicant if they had anything to add.

Kyle Tipton, property owner, advised the entrance there already exists inside the building, it's not connected to the main part that we plan to renovate, and the siding on the outside is going to be updated to match.

Mr. McGuinness, the building that exists, what you're saying is that you have a portal at the interior access point that you're going to be adding to this building that already exists, does that exist now or is that in planning stage. Mr. Neely, the Contractor, advised, we have a 40 by 20 existing structure. There is an existing room, a paint booth, with existing doors, I did not draw the entire footprint in this area because we were focusing on this main area, but there is another man door and another overhead door at the end of the building. There are more access points to

the accessory structure. The accessory structure already has what I would call an entertainment room, this is currently finished right now with a drop ceiling and it does have HVAC. There are windows in here, and as far as exit points and entry points, all the bedroom windows are egress. There are plenty of exit points for that. The addition will have a residential look with a nice front patio, covered patio.

Mr. McGuinness stated, so we're taking an existing structure, and we're converting it into a mother-in-law suite, is it plumbed and is there electricity already? Mr. Neely advised, there is plumbing, there is a water line. We were going to propose a separate a septic system for this unit and that was scheduled to take place on May 15th. The homeowners are now interested in tying into city water and sewer for both units.

Mr. McGuinness stated, so it's livable right now from what you're saying. Mr. Neely advised, I probably wouldn't want to live in it right now, but yes, you could sleep in there and live in there, our goal is to update the space for a retirement unit.

Mr. McGuinness asked, you're going to be adding on to it, which is adding to the footprint, which is why we're talking about the size, and then the other thing that we're talking about is the exterior finishing. Your proposal is to go ahead and make the exterior finish modernized, to match the house. Mr. Tipton advised, that's correct. We have already done some of that with just the part that we've renovated and as we continue to renovate other parts of the home, it will be updated to the new style.

Mr. Madewell stated, Ms. Snyder's concern is that interior access point that she identified, and because that is there that has to include the whole area in the square footage. Mr. Neely advised, that is an existing room, it is not going to be an entryway. Mr. Madewell stated, so there's no entryway into that access, does this change things. Ms. Snyder advised, so yes, that was my misunderstanding that would be an entry point there. I saw a toilet and assumed that there was also a kitchen in that area and that would constitute an accessory or a livable dwelling space. I apologize that was my misunderstanding for the interior access points.

Mr. Tipton stated, at the end of the building, there's another overhead door with another main door entrance, that will remain my barn and access for tractors. The idea is to take what is just a very large, rather unsightly barn and take the back half of it and renovate it into a nice living structure and it will still be connected to the barn, but it will have that solid wall between it, making it two separate structures.

Mr. McGuinness asked, how many people are going to be in this in the ADU? Is it mom or mom and dad or is it mother-in-law and father-in-law. Mr. Philpot replied it will be an in-law ADU.

Mr. McGuinness asked, do you have a time frame for updating the main residence? Mr. Philpot stated not exactly, but as soon as time and money allows.

Mr. McGuinness asked, are there animals in the barn? Mr. Philpot replied, no animals are in the barn.



Mr. McGuinness asked for a motion to open the hearing for public comment. Motion by Ms. Caldwell to open the hearing for public comments, motion was seconded by Mr. Madewell. Voting: Mr. McGuinness-yes, Ms. Hunter-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-yes. Motion passed 5-0.

There were no comments for or against this case, Mr. McGuinness asked if the City received any emails or letters for this case. Ms. Snyder replied, one letter was received in support that was included in your packet. I also received an email from Matt Heck who stated he has no objections to this request.

Mr. McGuinness asked for a motion to close the hearing for public comment. Motion by Mr. Pahren to close the hearing for public comments, motion was seconded by Mr. Greer. Voting: Mr. McGuinness-yes, Ms. Hunter-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-yes. Motion passed 5-0.

Mr. McGuinness asked the Board if they had any further comments. None were heard. Ms. Caldwell read the Findings of Facts and the Board found this case meets the Standards for Variance listed in chapter 1141.07(A)(4) of the City of Clayton Planning and Zoning Code. Mr. Madewell made a motion that we approve the Variance with the following conditions: the proposed architectural finishes shall match those shown in the submitted plans, and the ADU shall not be sold or conveyed separately from the primary residence. Motion was second by Mr. McGuinness. Voting: Mr. McGuinness-yes, Ms. Hunter-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-yes. Motion passed 5-0.

VII. End of Meeting

There being no other business to come before the Board, Mr. Pahren moved to adjourn the meeting and Mr. Greer seconded the motion. Voting: Mr. McGuinness-yes, Ms. Caldwell-yes, Mr. Madewell-yes, Mr. Pahren-yes, and Mr. Greer-yes. Motion passed 5-0.

Meeting adjourned at 8:16 PM.

Ashley N Caldwell
Mrs. Ashley Caldwell, *Vice-Chair*
8/5/25
Date

Barbara Seim
Ms. Barbara Seim, *Secretary*
August 5, 2025
Date