



**CITY OF COLUMBUS
 BOARD OF ZONING APPEALS
 (December 17th, 2013 Meeting)**

STAFF REPORT

Docket No. / Project Title: CDS-13-35 (MacAllister's)
Staff: Leanne Wells
Applicant: Tarbert Properties, LLC
Property Size: 11.16 Acres
Current Zoning: CC (Commercial: Community Center)
Location: 3465 East Street, Columbus, IN. 47201

Background Summary:

The applicant is requesting a variance from Zoning Ordinance Section 9.3 (D) (2) for the height of a front yard fence for non-residential properties. The ordinance allows a maximum of 8 feet for rear and side yard fences, and a 42 inch maximum for front yards. The request is for the front yard fence to be 8 feet in height to protect a large equipment rental site. The property is located at 3465 E. State Street, in the City of Columbus.

Preliminary Staff Recommendation:

Denial: Criteria 3, has not been met.

Zoning Ordinance Considerations:

District Intent: The intent of the CC (Commercial: Community Center) zoning district is as follows: This zoning district is intended to establish appropriate locations for a variety of businesses providing a variety of goods and services to (1) community-wide consumers and (2) those who travel through or visit the area. This zoning district is not intended for use along traffic corridors, but should instead be applied at significant intersections along major transportation routes. This zoning district should be applied only to areas with adequate infrastructure and road access to accommodate moderately high traffic volumes.

Development Standards: Section 9.3 (D)(2) states that no fence or wall shall exceed a height of 8 feet in any side or rear yard or 42 inches in any front yard. In the case of properties with multiple front yards, this restriction shall apply only to the front yard providing the primary access to the property.

Current Property Information:	
Land Use:	Retail site
Site Features:	None
Flood Hazards:	Southern portions of the property in the 100 year floodplain, 500 year floodplain and floodway.

Vehicle Access:	State Street (Major Arterial, Commercial, Suburban)
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Surrounding Zoning and Land Use:		
	Zoning:	Land Use:
North:	RS4, AP (Residential Single Family 4, Agriculture Preferred)	Single-Family Residential, Agriculture
South:	AP (Agriculture Preferred)	Agriculture
East:	AP (Agriculture Preferred)	Cash Grain/General Farm
West:	CC, I2 (Community Commercial, Industrial General)	East Columbus Fire Department, Light manufacturing, Industrial warehouse

Interdepartmental Review:	
City Engineering:	No Comments
City Utilities:	No Comments

Planning Consideration(s):

The following general site considerations, planning concepts, and other facts should be considered in the review of this application:

1. The intent of the fence standard is to ensure public safety by maintaining sufficient visibility within front yard and other areas where vehicles or pedestrians may frequent. The requirements are also intended to provide a degree of uniformity of regulation, provide adequate protection for individual properties.
2. State Street serves as a corridor that offers amenities to the public in the form of a variety of businesses providing goods and services to the community and those who travel through or visit the area.
3. The applicant rents large pieces of construction equipment to contractor's that are kept on the lot inside the fence when they are not rented. The applicants intent is to promote security for this stored equipment to be accomplished by the fence height increase.
4. The distance from the public right of way to the edge of the front yard fence will be approximately 40 feet. The distance from the edge of pavement on State Street to the front yard fence will be approximately 60 feet.
5. The fence will be constructed of chain link. According to Section 6.1(3)(h)(ii), outdoor storage for vehicle display is considered the same as parking lots; except a vehicle display lot is not required to provide perimeter parking lot landscaping (Section 8.1 (C)(1)).
6. State Street is approximately 6 to 8 feet higher than where the front of the fence will be. This fact may enhance the request for the 8 foot fence in the front yard.
7. The property includes 100 year, 500 year and floodway acreage on the southern part of the parcel.

Provisional Findings of Fact/Decision Criteria:

The Board of Zoning Appeals may approve or deny variances from the development standards of the City of Columbus Zoning Ordinance. The Board may impose reasonable conditions as part of an approval. A variance from the development standards may only be approved upon a determination in writing that:

1. **The approval will not be injurious to the public health, safety, morals, and general welfare of the community.**

Provisional Findings: The proposed fence 8 foot fence will be located approximately 40 feet from the right of way and 60 feet from the edge of pavement on State Street. The fence will not be located within the intersection visibility area of the adjacent streets or driveways. *This criterion **has been met.***

2. **The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.**

Provisional Findings: The use and value of the areas adjacent to the property will not be affected in an adverse manner due to the distance of each property from the proposed fence. The closest structure is the East Columbus Fire Station at 175 feet to the west. The next closest property is a single family house approximately 280 feet to the north. Lastly, the topography of the existing site is situated lower than State Street, thereby enhancing the request for the 8 foot fence. *This criterion **has been met.***

3. **The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed, nor be based on a perceived reduction of, or restriction on, economic gain.**

Provisional Findings: The strict application of the terms of the zoning ordinance will not result in practical difficulties in the use of the property. There may be other possible site configurations for the proposed building that could allow for storage behind the building. *This criterion **has not been met.***

Board of Zoning Appeals Options:

In reviewing a request for development standards variance the Board may (1) approve the petition as proposed, (2) approve the petition with conditions, (3) continue the petition to a future meeting of the Board, or (4) deny the petition (with or without prejudice). Failure to achieve a quorum or lack of a positive vote on a motion results in an automatic continuance to the next regularly scheduled meeting.

**Columbus – Bartholomew County Planning Department
Development Standards Variance Application**

Planning Department Use Only:

Jurisdiction: Columbus Bartholomew County

Zoning: _____

Docket No.: _____

Hearing Procedure: Hearing Officer Board of Zoning Appeals

Development Standards Variance Application:

Applicant Information (the person or entity that will own and/or execute what is proposed):

Name: Tarbert Properties LLC

Address 7515 E.30th Street, Indianapolis, Indiana 46229
(number) (street) (city) (state) (zip)

Phone No.: _____ Fax No.: _____ E-mail Address: _____

Property Owner Information (the "owner" does not include tenants or contract buyers):

Name: SPS Warehouse Inc. by Verl Mauzy, owner

Address 3475 East State Street, Columbus, Indiana 47201
(number) (street) (city) (state) (zip)

Phone No.: _____ Fax No.: _____ E-mail Address: _____

Notification Information (list the person to whom all correspondence regarding this application should be directed):

Name: John Stroh

Address 321 Washington Street, Columbus, Indiana 47201
(number) (street) (city) (state) (zip)

Phone No.: 812-372-1553 Fax No.: 812-372-1567 E-mail Address: johnstroh@sbswlaw.com

How would you prefer to receive information (please check one): Email Phone Fax Mail

Property Information:

Address 3465 East State Street, Columbus, Indiana 47201
(number) (street) (city) (state) (zip)

or General Location (if no address has been assigned provide a street corner, subdivision lot number, or attach a legal description):

Variance Requested:

I am requesting a variance from Section 9.3.D.2 of the Zoning Ordinance to allow the following:

A fence in the front yard that would be eight feet tall at its highest point.

Variance Request Justification:

The Indiana Code and the Columbus & Bartholomew County Zoning Ordinance establish specific criteria that must be met in order for a development standards variance to be approved. Describe how the variance request meets each of the following criteria.

The approval will not be injurious to the public health, safety, morals, and general welfare of the community.

Permitting an 8 foot fence in the front yard will not be injurious to the public health, safety, morals and general welfare of the community. In fact, it will improve the safety and general welfare of the community. MacAllister rents large pieces of construction equipment that are kept on the lot inside the fence when they are not rented. If someone were to get over the fence into the lot and try to operate the equipment, the individual could be seriously injured, the individual could seriously injure someone else, and the individual could cause significant property damage. A 42 inch fence does not act as a significant barrier to persons trying to illegally enter the property.

The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

Permitting an 8 foot fence will not adversely affect the use and value of the area adjacent to the property in a substantially adverse manner. The remaining portion of the lot will be enclosed by an 8 foot fence that is permitted by the ordinance. Maintaining the same height for the entire length of the fence will create a more uniform look. Because of the topography of the lot, the curve in the highway, and the existing buildings on contiguous lots, the additional height on the section of the fence in the front yard will not be readily apparent to those who are passing by. In addition, there are several properties in the area that have fences in front yards that exceed the height requirement. A taller fence would be compatible with the other properties in the area.

The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. This situation shall not be self-imposed; nor be based on a perceived reduction of, or restriction on, economic gain.

If the Zoning Ordinance is strictly enforced and the fence height is only 42 inches, the prospective owner may be creating a dangerous situation. The potential for personal injury, significant property damage, or both is increased by requiring a shorter fence that is more easily climbed.

Application Fee Refund Information:

The adopted Planning Department Schedule of Application Fees provides for the refunding of application fees for this request if it is approved by the Board of Zoning Appeals. The refund will be provided by mail in the form of a check. It may take several weeks after the Board of Zoning Appeals approval to process the refund and issue the check. Please indicate to whom the refund should be provided:

Name: John Stroh

Address 321 Washington Street, Columbus, Indiana, 47201
(number) (street) (city) (state) (zip)

Applicant's Signature:

The information included in and with this application is completely true and correct to the best of my knowledge and belief.

John A. Stroh for Tarbert Properties, LLC 11/14/13
(Applicant's Signature) (Date)

Owner's Signature (the "owner" does not include tenants or contract buyers):

I authorize the filing of this application and will allow the Planning Department staff to enter this property for the purpose of analyzing this request. Further, I will allow a public notice sign to be placed and remain on the property until the processing of the request is complete.

John D. Manney 11/11/13
(Owner's Signature) (Date)

(Owner's Signature) (Date)