

# Memo

**To:** Zoning Board of Appeals  
**From:** Bryan Myrkle, Community Development Director  
**Date:** July 10, 2020  
**Re:** Request for modification of the height and area regulations for  
615 East Shepherd Street – fence setback requirements

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On your agenda for Monday evening's meeting is a request to the Zoning Board of Appeals for a modification to the height and area regulations for the property at 615 East Shepherd Street – specifically to allow a security fence to be erected near the south Right-of-Way line (property line).

As you likely remember from a recent meeting, the owner of Hometown Rentals, Charles Brand, requested and received a rezoning action to allow an expansion of that business onto one of the neighboring lots that he owns. Mr. Brand owns all of the parcels on the north side of the road in that 600 block of East Shepherd.

Mr. Brand has submitted a detailed letter of explanation for this request, and this is included in your meeting information. I urge you to read his letter, however in basic terms, Mr. Brand proposes to create a secure, outdoor storage area for his rental equipment (as discussed at the previous meeting); then improve the remainder of his parcel for lease by a second business. These subsequent improvements would include paving the customer portion of the parking area, and remodeling the interior of the building for professional office use.

**The regulation, as written, would require that Mr. Brand keep his fence at least 30 feet away from the south Right of Way line, significantly reducing the area that he has planned for equipment storage (a reduction in area of more than 1,700 square feet out of a parcel that is just over 8,000 square feet in total). This reduction in secure storage area could make the other planned improvements difficult or impossible if the**

rental equipment cannot be contained on the newly rezoned lot. Because some of this is tracked excavation equipment, it would likely make Mr. Brand's proposed parking lot paving impractical, due to anticipated damage to the blacktop.

The Zoning Board of Appeals has authority to grant this request if it makes several determinations, which are outlined in the resolution I prepared for your consideration. Some of these are determinations are relatively obvious and easy to make, such as whether allowing the requested fence placement would have negative offsite effects on light and air quality, street congestion, fire danger, and community comfort, morals or welfare. Others may require a bit more consideration, and I would like to address them more specifically:

- **Is the proposal for an appropriate improvement?** Because the parcels are zoned for commercial development and the area is master planned for continued commercial development, I believe an expansion of commerce in this area to be an appropriate improvement.
- **Would the proposal unreasonably diminish or impair established property values?** While it's possible that an aesthetic concern might be voiced regarding specific fence placements, the overall reorganization and improvements proposed for this property would be a net positive for the aesthetics of this block. This includes not only the repaving and remodeling, but also the organization and appearance of the rental equipment. It should also be noted that a nearby neighbor of this parcel is the Sensations Memory Care facility which previously applied for, and received, authorization to erect a fence on the right of way line.
- **Would the proposal impair public health or safety?** Based on the conditions at the site, and the history of people entering the site and hiding behind, climbing on or breaking into the equipment, the proposal is obviously an improvement to public safety.
- **Is the proposed modification necessary to secure the improvement, because of the parcel's relationship to surrounding development and its physical characteristics?** This determination is open to interpretation. However, if we, as a community, wish to see continued improvement, reinvestment and redevelopment in older parts of the city, where lots are smaller and open space is not readily available, strict adherence to expansive

setback requirements represent a barrier to development and a disincentive to investment.

The ordinance clearly anticipates that the height and area requirements will not work as a one-size-fits-all policy, because it makes allowance for modifications by the ZBA under these terms.

Please note that, while it is a somewhat clumsily worded section, I believe the ordinance also gives the ZBA leeway to impose conditions that it deems necessary to preserve and promote the character of the zoning district in question. An example of such a condition might be requiring plantings in the greenspace between the fence and sidewalk to improve appearances.

Please see below for site photos:



Blue stake represents proposed location of fence.





View of lot that would be paved if fence location is approved.



Second view of lot that would be paved if fence location is approved.