

BURTON TOWNSHIP

BOARD OF ZONING APPEALS

14821 Rapids Road | Burton, Ohio 44021 | 440.834.1500

MEETING MINUTES

Date: May 11, 2021

Time: 7:00 p.m.

Place: Burton Township Administration Building (*Zoom Meeting ID: 886 7509 5284)

Purpose: Public Hearing to review & act on application #1459-19 submitted by Andrea Mierau and to consider application #1521-21 submitted by Philip C. Miller.

Board Member(s) Present: Chairman Tim Snyder, Alan Skeen, John Nelson, Leonard Fife, 1st Alternate Frank Vecchio, 2nd Alternate Joe Dallos.

Absent: None.

Attendees: Philip C. Miller, Andrew Miller, Philip Miller Jr., Daniel Troyer, Bob Umholtz, Rick Gruber.

PUBLIC HEARING

Chairman Snyder calls the public hearing to order at 7:00 p.m. Roll Call of the Board shows Tim Snyder, Alan Skeen, John Nelson, Len Fife, 1st Alternate - Frank Vecchio, 2nd Alternate - Joe Dallos present. 2nd Alternate Joe Dallos will fill in for the open Board Member.

Chairman Snyder states the purpose of the hearing, which is to consider application #1521-21, submitted by Philip C. Miller, requesting an area variance for the property at 15145 Durkee Road.

Secretary O'Neill confirms that all adjacent property owners had been notified, as well as the public through newspaper publication. Newspaper notification included the Zoom virtual attendance credentials as well as Covid protocols. All those who had requested in person attendance were present, with the exception of Aaron Hershberger who was unable to attend. Zoom virtual attendance credentials were posted on the door during the meeting. The cell phone number of the Chair was posted on the door during the meeting for any last minute considerations, and no calls were received. No other members of the public requested permission to attend in-person and no one submitted documentation for consideration as instructed by the Covid protocol notice.

Chairman Snyder opens the hearing for testimony. Philip C. Miller of 15145 Durkee Road is affirmed. Mr. Miller states that he would like to build a house setback behind and centered between two (2) existing buildings on the property. The front of the property is extremely wet as is the rear. The proposed site is the driest area suited to build and would allow for a walkout basement. Mr. Miller states there is an existing shop on the property and it is partially being used as a temporary residence for him and his wife, there is a barn on the property as well.

Questions from the Board ascertain the dimensions of the new house will be thirty two (32) feet by forty eight (48) feet and will be setback four hundred and eighty five (485) feet from the road. The existing shop building on the property is approximately sixty (60) feet long and is setback approximately three hundred and forty five (345) from the road.

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Mr. Miller marks the setback distances and labels the buildings on the map submitted with the application. Chairman Snyder enters the map into record as Exhibit #1.

Mr. Nelson asks if the new house could be built within the three hundred and forty five (345) foot setback that currently exists. Mr. Miller states that part of the property is extremely wet, and the proposed build site is the driest spot on the property and the site will allow for a walkout basement. Mr. Miller comments that the septic system resides on the west side of the proposed house.

Mr. Nelson asks if the septic system hook up will be disconnected from the shop once the new house is built. Mr. Miller states that the septic hook up will remain as it is needed for the church services held there.

Mr. Skeen asks if the ^{sixty}sixy (60) foot by forty (40) foot shop was constructed as a home. Mr. Miller responds "no." Mr. Skeen asks if the shop has a kitchen. Mr. Miller states that it has a temporary kitchen and the shop is being used temporarily while the house is built.

Chairman Snyder asks if the shop was built as an intended residence. Mr. Miller states that the shop was not, it was intended as a temporary dwelling and once the house is built, the shop will not be used as a residence going forward.

Rick Gruber, Zoning Inspector, of 14369 Broadwood Drive, Burton, OH 44021 is sworn in. Mr. Gruber explains that Claridon Township issued a building permit to Mr. Miller for the shop. By the time Mr. Gruber was aware of the issue, Mr. Miller's shop was mostly built. Mr. Gruber states that Mr. Miller was upfront about the shop being a temporary residence and that the shop looks like an accessory structure.

Chairman Snyder asks if an occupancy permit was issued. Mr. Gruber states he is not sure. Chairman Snyder asks if the shop is a residence. Mr. Gruber states "yes."

With no further questions from the Board, Chairman Snyder moves on to review the Duncan Factors in consideration for the variance.

- A. Whether the lot in question will yield a reasonable return or whether there can be any beneficial use of the property lot without the variance? **Mr. Miller states "no." He purchased property in 2016 with the intent to construct a residence, the shop is just temporary.**
- B. Whether the variance is substantial? **Mr. Miller states "yes."**
- C. 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? **Mr. Miller states the house would not have any effect. This property was part of the old Grandview Golf Course, therefore, there are no houses close to his property. Mr. Miller states he has other family that also lives on the street.**
- D. Whether the variance would adversely affect the delivery of governmental service? **Mr. Miller responds "no."**

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- E. Whether the lot owner's purchased the lot with the knowledge of the zoning restriction. **Mr. Miller states "no."**
- F. Whether the lot owner's predicament feasibly can be obviated through some method other than a variance? **Mr. Miller responds "no."**
- G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance? **Mr. Miller states "yes."**

Mr. Nelson asks when the existing buildings were constructed on the property. Mr. Miller, with confirmation from Mr. Gruber, states that the shop was built in 2016 and the agricultural building was built in 2018. Mr. Gruber will verify the applicable Zoning Resolution based on the construction date.

Robert Umholtz of 15000 Durkee Road is affirmed. Mr. Umholtz states prior to purchasing his property he looked at Mr. Miller's property. He attests that Mr. Miller's property is closest to the river and is adjacent to Mr. Miller's daughter's property and a public hunting ground, owned by the City of Akron.

Mr. Umholtz further states that when the property was Grandview Golf Course, this particular property (hole #11) would occasionally be closed due to standing water. He testifies that it would be a hardship for Mr. Miller to construct his home at another site and detrimental to the neighborhood if he had to sell, stating that Mr. Miller keeps his property in pristine condition. Mr. Umholtz is supportive of the variance and requests that the Board grant it.

Mr. Umholtz also spoke on behalf of another friend, Mr. Aaron Hershberger, who was unable to attend, stating that Mr. Hershberger is in support and asks that the Board grant the variance.

Chairman Snyder acknowledges Mr. Hershberger's testimony into record, and acknowledges that there are no Zoom participants at this time.

Mr. Gruber states that he has verified the Zoning Resolution amended 2015 requires that accessory buildings at, or behind the primary residential structure. Mr. Gruber states that the building permit for the shop was obtained on September 1, 2018.

Mr. Vecchio addresses Mr. Gruber, asks if Burton Township Zoning allows construction of an accessory structure without a primary residence. Mr. Gruber responds "no." He states that the shop was built as a residence in 2018.

Mr. Nelson asks Mr. Miller if the shop could become the primary residence and an accessory structure be built in place of the proposed home. Mr. Miller states that the shop currently does not have a basement.

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Mr. Skeen asks if anyone will be sleeping in the shop once the new house is built. Mr. Miller responds "no."

Mr. Nelson observes that the existing shop will be larger than the proposed house. Mr. Miller comments that the dimensions of the house will be smaller, however it will include a walk-out basement.

Mr. Umholtz states that the existing shop does not look like a dwelling on the outside and the interior is a make-shift residence, with concrete floors. He further comments the shop was not constructed to be a house. Mr. Umholtz comments that it had to be listed as a residence for Mr. Miller to get the residence permit.

Chairman Snyder states that Burton Township does not permit multiple dwellings on a property. Mr. Miller states that he is aware of that regulation and will abide by the resolution.

Mr. Nelson suggests to move the agricultural building to the proposed house site. Mr. Miller states that would not be an option financially. He explains that the location of each building allows him to use the property efficiently based on the needs of his family.

Mr. Vecchio asks Mr. Miller if an occupancy permit is issued for the shop. Mr. Miller is not sure if one was issued. Mr. Skeen asks if occupancy permit will be surrendered from the shop once the new house is constructed. Mr. Miller responds "yes."

Mr. Gruber refers to the definition of "Dwelling" in Section 201.0 of the Burton Township Zoning Resolution, which he interprets to be residential occupancy if someone is living there. He further states that Mr. Miller has provided a notarized application for one (1) dwelling. Mr. Gruber testifies that Mr. Miller was upfront about the situation from the beginning and that he is aware that only one (1) dwelling can exist on the property. Mr. Gruber states that this is a separate issue from what has been denied on the application, regarding the location of the proposed dwelling.

Mr. Skeen asks if the approval of the variance also grants construction of the new house. Mr. Gruber responds "yes."

With no further testimony and nothing further from the Board, Chairman Snyder closes the public portion of the meeting at 7:40 p.m. and the Board goes into private deliberation.

At 7:43 p.m. the public hearing is reopened for additional testimony.

Mr. Nelson inquired about the space between the existing buildings. Mr. Miller states that the space, approximately one hundred (100) feet, is needed for a turn-around in order to access the ramp from the barn.

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Mr. Nelson asks if there is any advantage to move the new house closer to the road. Mr. Miller states that the well is located up front, the area is extremely wet and moving the proposed site would not make sense.

Mr. Gruber confirms there are wetlands in front and comments that the proposed build site is the driest area and is the only location to allow for a walk-out basement.

Mr. Vecchio asks if any of the accessory buildings are planned for a business. Mr. Miller responds "no."

With no further testimony Chairman Snyder recloses the public portion of the meeting at 7:46 p.m. for private deliberation.

At 7:53 p.m. Chairman Snyder reopens the public hearing and entertains a motion.

Mr. Skeen makes a motion to grant Philip C. Miller relief from Article IV, Section 401.1 Section A Paragraph 1 for the property located at 15145 Durkee Road, Burton Township, allowing Mr. Miller to construct a primary residence approximately one hundred and forty (140) feet from the front of the accessory building located approximately three hundred and forty five (345) feet from the road.

Mr. Fife seconds the motion. Chairman Snyder calls for discussion. With no discussion on the motion it goes to a vote.

Roll Call Vote: Tim Snyder - yes, Alan Skeen - yes, John Nelson - yes, Len Fife - yes, Joe Dallos - yes. All in favor. None opposed. Motion carries.

Chairman Snyder announces that the request for variance has been granted. He states that any opposition has the ability to appeal this decision within the next thirty (30) days. Therefore, any progress made on this matter is done at the risk of the applicant. With nothing further to discuss Chairman Snyder concludes this portion of the public hearing at 7:57 p.m.

Chairman Snyder entertains a motion to accept the Findings of Facts as read during private deliberation. Mr. Skeen makes a motion to accept as written.

Mr. Nelson seconds the motion. Chairman Snyder calls for discussion. With no discussion on the motion it goes to a vote.

Voice vote: All in favor. None opposed. Motion carries.

OTHER BUSINESS

At 8:10 p.m. Chairman Snyder reviews application #1459-19, submitted by Andrea Mierau, located at 12801 Kinsman Road in Burton Township. He reads the notice attached hereto. The notice was mailed to Ms. Mierau on April 16, 2021 & May 1, 2021; Rick Gruber, Burton Township Zoning Inspector personally delivered to Ms. Mierau on May 5, 2021.

At this time Ms. Mierau has not provided any response as to the status of her fence. Mr. Gruber states that upon inspection of the property on May 5th, the fence in question had been removed and that Ms.

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Mierau stated she would be moving outside of the Township, with no intention of erecting the fence. Mr. Gruber believes that the State also denied the request for the fence.

Based on this information, Application #1459-19, submitted by Andrea Mierau is denied by executive order from Chairman Snyder, for failure to respond to the request.

NEW BUSINESS

Application #1526-21, submitted by Abner Hershberger Jr. is disseminated to the Board and a tentative hearing date is set for Tuesday, June 8, 2021 at 7:00 p.m. with Tuesday, June 15th as the alternate date.

REVIEW OF MINUTES

The Board reviews the minutes from the Organizational Meeting held Thursday, January 21, 2021. Mr. Fife recuses himself from the vote and Mr. Vecchio fills in.

Mr. Skeen makes a motion to approve the minutes as written. Mr. Vecchio seconds the motion. Chairman Snyder calls for discussion. With no discussion on the motion it goes to a vote.

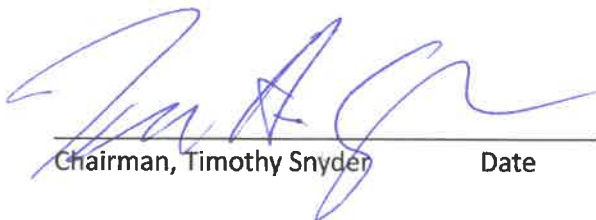
Voice vote: All in favor. None opposed. Motion carries.

NEXT MEETING

Next scheduled meeting will be held on Tuesday, May 18, 2021 at 7:00 p.m. for a public hearing to consider application #1524-21, submitted by Melvin D. Miller.

ADJOURNMENT

With no further business to discuss, Chairman Snyder entertains a motion to adjourn. Mr. Nelson so moves. Mr. Dallos seconds the motion. Voice vote: All in favor. None opposed and the meeting concludes at 8:35 p.m.



Chairman, Timothy Snyder Date



Secretary, Katie O'Neill Date