

BURTON TOWNSHIP

BOARD OF ZONING APPEALS

14821 Rapids Road | Burton, Ohio 44021 | 440.834.1500

MEETING MINUTES

Date: February 8, 2022

Time: 7:00 p.m.

Place: Burton Township Administration Building

Purpose: Public Hearing to consider Application #1539-21 submitted by Patrick O'Neill.

Board Member(s) Present: Chairman Tim Snyder, Alan Skeen, John Nelson, Leonard Fife, Marilyn Percic, 2nd Alternate Joe Dallos, Secretary - Katie O'Neill.

Absent: Frank Vecchio - excused (adjacent property owner).

Attendees: Patrick O'Neill, John O'Neill, Frank Vecchio, Rick Gruber.

PUBLIC HEARING

Chairman Snyder calls the public hearing to order at 7:00 p.m. Secretary O'Neill confirms that all adjacent property owners had been notified, as well as the public through newspaper publication.

Roll Call shows Board Members: Tim Snyder, Alan Skeen, John Nelson, Marilyn Percic & Len Fife to be present. 2nd Alternate Joe Dallos is present as well. For the record Chairman Snyder states that 1st Alternate, Frank Vecchio is present, however as an affected property owner, he can only participate as a member of the public, with no participation as a member of the Board. With all members present, voting Members include: Tim Snyder, Alan Skeen, John Nelson, Marilyn Percic & Len Fife. *Note: It should be stated that Secretary O'Neill has no direct relation to the Appellant(s) Patrick O'Neill. This was established off the record prior to the start of the public hearing.*

Chairman Snyder announces the purpose of the hearing which is to consider Application #1539-21 for an area variance, submitted by Patrick O'Neill for the lot located at 13947 Claridon Troy Road, Parcel #04-097400.

Patrick O'Neill, residing at 13947 Claridon Troy Road, Burton Township, is sworn in. Mr. P. O'Neill explains that he is wanting to split off a five (5) acre parcel from his twenty five (25) acres in order for his parents to build a new residence while incorporating an existing barn into the new build. He states he is seeking a variance to the three hundred (300) foot lot width requirement and a variance to the forty (40) foot side lot requirement for both his barn and the barn on the new parcel.

John O'Neill, residing at 9600 Heron Drive, Hambden Ohio, is sworn in. Mr. J. O'Neill, father of Patrick, adds that two (2) side yard variances are being requested. He states currently two (2) barns exist on the property, however once the five (5) acres is split, the new property will separate the two (2) buildings. He clarifies that one (1) side yard variance is needed on the future five (5) acre parcel and another side yard variance on the existing twenty five (25) acre parcel.

Chairman Snyder states that for a request of an area variance the practical difficulty standard is applied. He asks the applicant(s) to provide the existence of practical difficulty.

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Mr. J. O'Neill states the proposed build site is the best location on the property to build. He testifies that the property drops off towards the front and a ravine would need to be crossed to access the back of the property to the east.

Chairman Snyder asks if the proposed site is the only option to build on the property. Mr. J. O'Neill responds "no," and explains that there is a location towards Claridon Troy Road, however it is close to the road.

Chairman Snyder asks if the proper width requirement would be met if the closer location was used. Mr. J. O'Neill believes it would, however he can not say with complete confidence because he did not assess the details of that location.

Chairman Snyder asks for further evidence of practical difficulty, stating that the want of this request is not discounted, however it does not satisfy the standard for the consideration of the Board.

Mr. J. O'Neill states that the ability to utilize the existing barn would financially save approximately seventy thousand dollars (\$70,000) towards the new build and the location is better suited for a gravity fed septic system in front or back of the building. He further states that the other location would put the building as close to the road as minimum setback allows, which would affect the location of the septic system.

Mr. P. O'Neill testifies that the alternate location would utilize a portion of his property that has been designated to farm. Chairman Snyder asks if the land was farmed this year. Mr. P. O'Neill states "no," explaining that it was farmed the previous year and has been prepped to be used next year to grow pumpkins.

Mr. J. O'Neill states the rear of the property is used to pasture a neighbor's horse, and that same neighbor uses the front of the property to supply hay.

Mr. Nelson points out that the current width of the property is five hundred (500) feet so having three hundred (300) feet adjacent is not possible. Using the map of page seven (pg. 7) of the application, Mr. J. O'Neill illustrates where the property lines would be if the alternate location was used. He explains that frontage would need to be one side or the other. Utilizing the same map, Mr. J. O'Neill explains the topography of the property, stating that the best location for a residence is the original site. Chairman Snyder asks if he could build in the back of the property. Mr. J. O'Neill states that a bridge over the creek would be needed to build at the rear of the property.

Mrs. Percic asks if driveways and septic systems would be shared. Mr. J. O'Neill answers "no," stating that both will be new. He utilizes the previous map to illustrate where the current driveway is. He further states that due to a blind spot on Claridon Troy, the driveway is unable to connect straight from the house to the road. Mr. J. O'Neill testifies that the specifics of the driveway have not yet been finalized.

Mr. Skeen points out that there are restrictions on where driveways can be located, stating it is an important feature. There is a required twenty (20) feet from property lines for a driveway.

Mr. Nelson asks the Zoning Inspector if a forty (40) foot setback is required for accessory buildings. Rick Gruber, Zoning Inspector, residing at 14369 Broadwood Drive in Burton Township, is sworn in. He

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answers “yes, the setback requirements are for all structures.” Mr. Nelson asks whether a utility or accessory use needs to meet the requirement. Inspector Gruber confirms, stating the only exception is for agricultural buildings.

Mr. Nelson asks if the forty (40) foot requirement is being met for the existing residence. Mr. P. O’Neill confirms “yes.” Mr. J. O’Neill states the variances from the forty (40) foot requirement exists between the two (2) barns. Mr. Nelson asks if the barn on the new parcel was eliminated, would the forty (40) foot requirements be met. Mr. J. O’Neill states he could possibly change the design of the house.

Mr. Skeen asks if the barn in question becomes an attached garage. Mr. J. O’Neill answers “yes,” and states that it is a substantial structure to tear down, which is why he wants to utilize it. The barn has a three (3) foot block wall, concrete floor and was previously used as a hay loft. In order to convert it to a garage the existing joists will need to be raised.

Mr. Nelson comments that by granting the variances would result in two (2) non-conforming lots. Mr. J. O’Neill agrees.

Mrs. Percic asks if both barns were incorporated into the new proposed parcel, [by moving the lot lines] and shared a driveway, would the requirements then be met. Mr. P. O’Neill states his parcel would not meet the eighty (80) feet requirement, therefore he would need a variance for his driveway to access the new proposed parcel.

Mr. Skeen asks Inspector Gruber to clarify if the application is requesting variances for two (2) separate parcels. Inspector Gruber states there is currently one (1) parcel number. Further stating in order to split the property through the [Geauga] County, the variance must be granted. Mr. Skeen agrees and states that the Applicant(s) also needs a variance for the existing parcel if the new parcel is created. Inspector Gruber states three (3) variances are being requested, one (1) side yard setback for the existing parcel and one (1) side yard setback and one (1) lot width setback for the building site on the new proposed parcel. Mr. Skeen states by granting the variance on the existing parcel it creates a non-conforming lot. Inspector Gruber agrees and states that the new proposed lot can not be created without granting the side yard and lot width variances.

Chairman Snyder states that creating two (2) non-conforming lots is a concern. The Zoning Resolution tries to make things more conforming not less conforming. Because the Zoning Resolution was implemented after the existence of the Township, inherently there will be non-conforming lots. However, the goal is to work towards more conformance. Chairman Snyder states that although the request is a compatible solution for the family, will it create an issue when the property is sold. In that scenario he states he has great concern that by granting the variances, it will be creating issues in the future.

Mr. P. O’Neill states he was unaware of the agricultural exception within the Township. He asks Inspector Gruber if the barn that would remain on his property qualifies as agricultural. Mr. P. O’Neill states he uses the barn to store the farm equipment used to farm his property. Inspector Gruber responds if the structure is used for farm equipment to farm the land, then yes. Mr. P. O’Neill testifies that he does use

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the barn as an agricultural structure, and therefore that should eliminate the need for the side yard setback variance on his property [leaving his parcel in conformance with zoning].

Mrs. Percic asks Inspector Gruber if there is enough space between the two (2) barn structures to erect a fence if needed. Inspector Gruber states a fence can be installed right on the property line. Mr. J. O'Neill testifies enough space exists to install a fence between the two (2) buildings.

Mrs. Percic asks for clarification on the location of the driveway. Mr. J. O'Neill explains that the current driveway consists of a large parking area, cuts across to the south and then joins an adjacent neighboring driveway to exit out onto Claridon Troy Road. Mrs. Percic asks if the driveway for the new parcel would utilize the same ingress/egress. Mr. J. O'Neill states that he could install a driveway from his home straight out to Claridon Troy Road.

Mr. Skeen points out there is a lot of ambiguity within the drawings submitted with the application, which makes it difficult to understand the intent and what will actually happen. Mr. Skeen states he would like to see a drawing that illustrates what is proposed to be built and where the proposed building will be located. Mr. J. O'Neill states he did not include a driveway on the drawings that were submitted.

Inspector Gruber states that upon granting the variances a building permit will be needed, and he intended to discuss the driveway at that point in time. He testifies that when the request was presented, he discussed with the applicants that the one driveway that cuts across several parcels is in violation of zoning. The guidance provided at that time was that applicants would come back and install driveways that satisfied zoning for both parcels to ensure that the existing driveway that spans across three (3) parcels would no longer be used.

A discussion regarding blind spots and speed limits ensues.

Mr. J. O'Neill testifies that the thought process was to obtain the variance, then they could get the soil tested, get the septic system approved, then split the lot. Inspector Gruber states that the soil testing and septic approval is governed by the [Geauga County] Health Department. Mrs. Percic comments she wants to ensure that there are no other foreseeable obstacles for the Township if the variances are granted.

Inspector Gruber elaborates on the process stating it is a bit difficult because it all hinges off of the granting of the variance. He states that an approved variance is required from the County in order to complete the lot split. Once the lot split is approved the Health Department can finalize the septic system that does not cross property lines.

Mr. Nelson asks if it is practical to move the new build location to the rear of the property. Mr. J. O'Neill states due to topography the back of the property is inaccessible. There is a creek that prevents access and he would not be able to redirect water from low spots in the location. He refers to the topography map within the application to illustrate further. Mr. Nelson asks if the same issue exists if the new build were to be moved towards the front of the property. Mr. J. O'Neill states there is a large knoll that drops off in the front, however it is a possibility. Further stating that the closer location would barely meet all the [zoning] requirements and would limit the size of the new build and septic system. Mr. Nelson addresses Inspector Gruber and he asks him to confirm if the closer location would in fact meet zoning.

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Inspector Gruber believes it would, however without reviewing the details of that location, he can not guarantee it.

Mr. Skeen asks Inspector Gruber if he can confirm the following distances for the requests:

- one hundred and ten (110) foot variance at the building site
- thirty five (35) foot variance for the [south] side of the existing lot (assuming the lot split)
- thirty five (35) foot variance for the [north] side of the new lot (assuming the lot split)

Mr. Gruber confirms. Mr. P. O'Neill states taking the agricultural building exemption into consideration, the thirty five (35) foot variance for the south side of the existing lot would no longer be needed.

With no further testimony Chairman Snyder reviews the factors for an Area Variance:

- 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. P. O'Neill responds that without the variance, they will be unable to build a residence there and the land will go unused. Chairman Snyder asks if there is beneficial use of the whole property currently. Mr. P. O'Neill states that he currently resides on the property. Chairman Snyder asks for a listing of other buildings on the property. Mr. P. O'Neill states there is a horse barn and a second barn located on the property.**
- Whether the variance is substantial? **Mr. P. O'Neill responds "no."**
- 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. P. O'Neill responds "no."**
- Whether the variance would adversely affect the delivery of governmental services? **Mr. P. O'Neill responds "no."**
- Whether the lot owner purchased the lot with the knowledge of the zoning restriction. **Mr. P. O'Neill responds "no." He states he did not intend to split the lot at the time of purchase. Chairman Snyder asks when the property was purchased. Mr. P. O'Neill responds "April of 2020."**
- Whether the lot owner's predicament feasibly can be obviated through some method other than a variance? **Mr. P. O'Neill responds "no."**
- Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance? **Mr. P. O'Neill responds "yes."**

Frank Vecchio residing at 13825 Claridon Troy Road, Burton Township, is sworn in. Mr. Vecchio testifies on his knowledge from previous applications, stating that he would like to bring to light a potential

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obstacle involving the lot split. He attests there is a restriction within the Geauga County Zoning Code that prevents a flag lot from being produced in front of an existing flag lot. Mr. Vecchio states there is an existing flag lot located behind the property in question, in which Geauga County could prevent the lot split approval of the new lot due to this restriction.

Chairman Snyder accepts Mr. Vecchio's testimony as informational. He further states that the Board can only consider the Zoning Resolution, to which the restriction Mr. Vecchio referenced would be out of scope for the Board, and in turn a [Gauga] County issue. Inspector Gruber agrees that point would need to be clarified by the Geauga County Planning Commission through the process of the lot split. Chairman Snyder states his general understanding is that Mr. Vecchio's statement is correct.

Mr. Skeen states during the Duncan Factors (factors for an area variance), when asked if "the owner's predicament can be obviated through some other method" the answer was "no." However, both Patrick & John O'Neill testified another location to build does exist on the property. Chairman Snyder states the applicant's responses for the factors are accepted and recorded, however it does not mean that the Board agrees with them. Mr. J. O'Neill states that his interpretation of that question pertained specifically to the utilization of the barn and he considers the alternate location a completely separate issue. Mr. P. O'Neill states that his response to the question was based on the intended use of the property at the time of purchase, which was to farm the property. He states eliminating that portion of the property as farmland is not an ideal choice.

Mr. J. O'Neill states that there are several parcels north that are non-conforming to the five (5) acre minimum. Chairman Snyder agrees and states the percentage of non-conforming lots within the Township is high. Mr. J. O'Neill asks when the three hundred (300) foot requirement went into effect and if it was a proposed change for a new development. Mr. Skeen responds that the requirements are based on R-5 zoning, which Burton Township consists of both R-3 & R-5 zoning.

With no further testimony and no further questions from the Board, Chairman Snyder closes the public portion of the hearing at 7:45 p.m. and the Board enters into private deliberation.

At 8:01 p.m. the public hearing is reopened and Chairman Snyder entertains a motion.

Mr. Skeen moves that the Burton Township Board of Zoning Appeals grants a variance to Patrick O'Neill as described in Application #1539-21 for the property at 13947 Claridon Troy Road, Burton Township. This being Parcel #04-097400. Applicant is requesting an area variance from the Burton Township Zoning Resolution as amended August 19, 2019, Article IV, Section 402.7, Paragraph A, Subsection 2 requiring the minimum side yard setback to be forty (40) feet and Article IV, Section 402.6, Paragraph A requiring the minimum lot width at building front yard set back line to be three hundred (300) feet. This variance will allow applicant two (2) 5-ft side yard setbacks and lot width at building front yard setback of one hundred and fifty (150) feet.

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Mr. Nelson seconds the motion. Chairman Snyder calls for discussion. No discussion ensues on the motion and Chairman Snyder calls for a vote.

Roll Call Vote: Tim Snyder - no, Alan Skeen - no, John Nelson - no, Len Fife - no, Marilyn Percic - no. None in favor. All opposed. Motion denied.

Chairman Snyder announces the application for the area variance has been denied. He explains that the appellant has thirty (30) days to appeal the Board's decision to the Court of Common Pleas.

Chairman Snyder entertains a motion to accept the Findings of Facts as read during deliberation. Mrs. Percic moves to accept as written.

Mr. Fife seconds the motion. Chairman Snyder calls for discussion. No discussion ensues on the motion and Chairman Snyder calls for a vote.

Roll Call Vote: Tim Snyder - yes, Alan Skeen - yes, John Nelson - yes, Len Fife - yes, Marilyn Percic - yes. All in favor. None opposed. Motion passed.

With nothing further to discuss Chairman Snyder concludes this portion of the public hearing at 8:04 p.m.

OTHER BUSINESS

The Board reviews the minutes from December 7, 2021, Application #1542-21 submitted by Richard & Mary Lambert. Mr. Skeen moves to approve the minutes as written. Mr. Fife seconds the motion. Chairman Snyder calls for discussion. No discussion ensues on the motion and it goes to a vote.


Voice Vote: All in favor. None opposed. Motion passed.

NEXT MEETING

The next meeting is scheduled for Tuesday, February 22, 2022 at 7:00 p.m. for a public hearing to consider Application #1546-22, submitted by Richard & Mary Lambert.

ADJOURNMENT

With no further business to discuss, Chairman Snyder entertains a motion to adjourn. Mr. Nelson so moves. Mrs. Percic seconds the motion. Voice vote: All in favor. None Opposed. The meeting concludes at 8:28 p.m.



Chairman, Timothy Snyder Date



Secretary, Katie O'Neill Date