

RECORD OF PROCEEDINGS  
TOWNSHIP BOARD OF ZONING APPEALS—REGULAR

Minutes of

Meeting

GOVERNMENT FORMS & SUPPLIES 644-224-3338 FORM NO. 10149

Auburn Township Administration Building

11010 Washington Street

January 25, 2022

Held BZA-2021-17v & BZA-2021-18v 20

**MEMBERS PRESENT:** ROBERT FORD, DOUG HOGAN, DAVID PARKER, BRIAN STEWART, LEWIS TOMSIC, MICHAEL VARLEY, BEN TIMMONS

**MEMBER ABSENT:** NONE

**MEMBERS HEARING**

**THE CASE:** Hogan, Parker, Stewart, Tomsic, Ford

**DOCUMENTS**

**IN CASE FILE:** See Case File, the case file is included as part of the official record, Including the Auburn Township Zoning Resolution

**BZA-2021-17v**-- an appeal requesting a variance, submitted by Tim McCaskey, McCaskey Landscape & Design for John and Elisa Dupree from the Auburn Township Zoning Resolution, Article 4A.07(b)(1): Building Setback Requirements **Side Yards** Adjoining a Residential District (minimum setback) 50' feet required, 17' proposed for a new accessory building located at 17640 Munn Road, Auburn Township OH 44023 in an B-1 zoning district.

**BZA-2021-18v**-- an appeal requesting a variance, submitted by Tim McCaskey, McCaskey Landscape & Design for John and Elisa Dupree from the Auburn Township Zoning Resolution, Article 4A.07(c)(2): Building Setback Requirements **Rear Yards** Adjoining a Non-Residential District (minimum setback) 50' required, 7' proposed for a proposed new accessory building located at 17640 Munn Road, Auburn Township OH 44023 in an B-1 zoning district.

The meeting was called to order by Chairman Doug Hogan at 7:00 PM.

The Pledge of Allegiance was recited.

Roll call was taken.

All members were present.

Mr. Hogan swore everyone in who was planning on testifying at the hearings.

Mr. Hogan noted that the official record for tonight's hearing are the minutes recorded by the Board of Zoning Appeals Secretary and that the case file is part of the official record.

Mr. Hogan read the opening statement as follows:

The BZA is a quasi-judicial body and as such, its role is similar to a judge in a court case. The Board will hear evidence and testimony that is factual and will make decisions based upon the facts, which are presented, the rules as set forth in the resolution and principles of law.

The Ohio Revised Code Section 519.13 requires that any Township that has adopted a zoning resolution, which Auburn Township has, appoint a five-member Board of Zoning Appeals and 2 alternate members. This Board is empowered to hear and decide appeals and to authorize variances from the strict terms of the zoning resolution where the variance will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the resolution will result in an unnecessary hardship or practical difficulties. The BZA is also permitted to authorize variances where the spirit and intent of zoning is upheld and substantial justice will be done.

With this being stated, the Board's proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest, mainly contiguous property owners, or their legal representatives, the opportunity to present the evidence, certain procedures need to be followed:



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All interested parties must be sworn in. The applicant will be asked to present evidence to support the requested appeal, the Board will ask questions, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence.

It is the applicant's burden to produce evidence to support the application. The Board will not make the applicant's case for them. In order to prepare appropriate meeting minutes, each person, who speaks, will need to state, for the record, his/her full name and address. The meeting may be continued by either the applicant or the Board.

The Board must base their decisions upon facts and not on expressions or concerns or non-factual matters. The action of the BZA does not become final until 30 days after the date of the meeting that the minutes were approved.

Chairman Hogan commented that there was no Old Business on the agenda. He then moved on to new business.

The following two cases were on the agenda under new business:

**BZA-2021-17v**-- an appeal requesting a variance, submitted by Tim McCaskey, McCaskey Landscape & Design for John and Elisa Dupree from the Auburn Township Zoning Resolution, Article 4A.07(b)(1): Building Setback Requirements **Side Yards** Adjoining a Residential District (minimum setback) 50' feet required, 17' proposed for a new accessory building located at 17640 Munn Road, Auburn Township OH 44023 in an B-1 zoning district.

**BZA-2021-18v**-- an appeal requesting a variance, submitted by Tim McCaskey, McCaskey Landscape & Design for John and Elisa Dupree from the Auburn Township Zoning Resolution, Article 4A.07(c)(2): Building Setback Requirements **Rear Yards** Adjoining a Non-Residential District (minimum setback) 50' required, 7' proposed for a proposed new accessory building located at 17640 Munn Road, Auburn Township OH 44023 in an B-1 zoning district.

**\*Officially Amended** by the applicants, to propose a 15' set back instead of the original 7' setback request. This request was verified with the appellants, John and Elisa Dupree and Tim McCaskey, by the Board of Zoning Appeals Secretary, Jane Hardy, in the presence of all Board of Appeals Members.

The applicant was asked to present their cases.

Tim McCaskey, from McCaskey Landscape and Design introduced himself to the Board of Zoning Appeals and indicated that he was representing John and Elisa Dupree.

Mr. McCaskey explained that his client's, property is located at 17640 Munn Road. Mr. McCaskey further commented that this is a very odd situation. He explained that the property is located in a B-1 zoning district and that it is currently being used residentially by the Duprees. He further explained that a small portion of the property near the northern property line is actually zoned R-1 residential. Mr. McCaskey also explained that since the property is abutting residential zoning to the North, there is a 50' required side yard setback for any structures and that the rear property set back is also 50'.

Mr. McCaskey further explained that both Mr. and Mrs. Dupree are currently working from home, full time, and currently both of their home offices are located in their home's basement; this has been a very difficult situation for them and it has gotten progressively worse.



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Mr. McCaskey indicated that last Spring, the Duprees removed a shed-type building, that was in very poor condition; and this structure was located very close to the north and west property lines. He indicated that the proposed structure would be in the same area and would be a great improvement to the property over what had previously been there.

Mr. McCaskey also stated that the property to the north of the Dupree's property has a barn-type structure that is a simple metal building. Mr. McCaskey showed pictures of the northern neighbor's accessory building to the Board. He explained that the Dupree's proposed building will be more a traditional building with a gable roof and will blend more into the look of the current dwelling. Mr. McCaskey also explained that the proposed structure will also be used as a garage; in addition to some office space, because the current garage space, on the Dupree's dwelling, is not sufficient for the needs of the family.

Mr. Stewart asked what the floor plan for the proposed structure would look like and if there would actually be room for cars, in addition to the office space.

Mr. McCaskey had copies of the proposed first and second floor plans and spaces of the structure and passed them around to the BZA members.

Mr. McCaskey explained that there would be office space, true garage space for cars, and a restroom on the first floor and the second floor will have additional storage space, an office and restroom. He commented that because the property is located in the B-1 district, a commercial district, that the height of the proposed structure can be more than 23', which is the allowed height in the R-1 and R-2 Zoning Districts. He further commented that the proposed structure will be 25' in height, but if the Township prefers, the height of the structure can be lowered to the 23'.

Mr. McCaskey further commented that there is not a lot of storage space in the current dwelling, because the current dwelling is a split level structure, with only a partial half basement; this, compounded with converting the basement into office space, eliminated a lot of the available storage for the Duprees.

Mr. Hogan asked if the proposed structure would be connected to the septic. It was noted that the current septic is located in the front of the dwelling. Mr. McCaskey commented that they did not know if the structure would be connected to the septic or if they would even be allowed to connect to the septic. Mr. Hogan also asked if the lot could be subdivided.

Frank Kitko, Auburn Township's Zoning Inspector, explained that the property is a legal non-conforming lot because of the lot's size; and because of the size of the lot, it would not be able to be split. Mr. Kitko also indicated that the property to the rear of the Duprees' lot was owned by Auburn Township and that the Land Conservancy is also involved in the property.

Auburn Township Trustee, PJ Cavanagh, was present at the meeting and indicated that there were plans for this area of the land to be developed into baseball fields. Mr. Hogan also indicated that he had concerns with the proposed structure becoming rental property.

It was noted that the Duprees planned on installing toilets in the proposed structure, but had no intentions on putting in a shower. Mr. Dupree indicated that the bathrooms would be a convenience when using the building's office space. It was noted that once plumbing is installed, there is no control over it and more plumbing fixtures can be installed. Mr. Tomsic commented that there is a concern that the structure can be used for an in-law suite or as an additional dwelling units.



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<p>Mr. Stewart asked if there would be heat in the structure. It was noted that the heat would be a mini split system with a dual head that would be used to condition air for both floors of the building.</p> <p>Mr. Kitko expressed concern that the required setback in B-1 is 50' and the variance request in the rear is asking for the setback to be 7', which is a significant variance request. He indicated that he has no issue with the structure itself; but the variance request is excessive. He explained that the accessory structure setbacks in the R-1 and R-2 zoning districts are 15' and this request would be excessive even in those zoning districts.</p> <p>Mr. McCaskey explained that the structure itself is 11' off the rear property line and it is the edge of the deck on the second floor that is 7' from the property line.</p> <p>Mr. Tomsic explained that if there was a fire in the back of the building, there would not be a fire lane available for fighting the fire.</p> <p>Mr. Kitko also commented that this request is unique.</p> <p>It was explained that when the B-1 Zoning District was created in this area, that rather than using actual property lines on individual lots, to establish the legal description, of the B-1 District, in that area, the boundary for the district was 600' from the center of Washington and Munn Road and that is why the line for the zoning district does not run on the property line but rather through the property.</p> <p>It was also noted for the record, that there was a letter from Randy Miller, who is the contiguous property owner to the north of the Duprees' property. The letter from Mr. Miller indicated that he did not have any issues with the Duprees' proposed project. Mr. Miller also noted, in his letter, that he was not be able to attend the meeting, because he was recovering from Covid. It was also noted that the property owners across the street from the Dupree's have not commented on the variance request.</p> <p>The Dupree's themselves testified that the proposed garage structure will be very helpful for their family situation with both of them working from home. They further explained that the building will also be helpful with their need for additional storage. Mrs. Dupree commented that she is a web designer and explained that they would like to be able to utilize their old guest bedroom as a guest bedroom and not have to use it as storage/office space. She also explained that they have two children and each need a bedroom.</p> <p>Mr. Tomsic commented that the soil on the property is very sandy and that he felt the existing septic system could handle the extra bathrooms.</p> <p>Dr. Varley commented that, in comparison, the neighbors building, to the North, could not be turned into a dwelling since it did not have plumbing. He noted that the Duprees' proposed building could be turned into a dwelling, once plumbing was installed.</p> <p>Mr. Ford asked if there would be a full foundation under this structure. It was noted that there would be a full foundation.</p> <p>P.J. Cavanagh commented that there are two concerns that the Township has with this project. He explained that the look and the setback request is very significant and since there are plans to develop the park property with ball diamonds, this proposed building is so close to the property line, that it could be used as a concession stand during the games.</p>		



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Mr. Cavanagh also had concerns that it could be turned into a second dwelling. Mr. Cavanagh also shared a personal experience that he had with a neighbor's accessory building being installed too close to his property line and eventually the neighbor's outside storage ended up encroaching onto Mr. Cavanagh's property.

Mr. Cavanagh indicated that he did not want to see a similar situation happen here.

Mr. Hogan asked if the structure could be moved forward on the property to allow for at least a 15' set back; which with the deck, would actually only be 11' off the property line. It was noted that the deck is actually at the second level and not at the ground level.

Mr. McCaskey indicated that the proposed structure could be moved off the rear property line so the variance request was not so substantial.

It was explained to Mr. McCaskey and the Duprees that if they agreed to move the structure forward than their variance request could be officially amended tonight at the meeting, to reflect the change. Both Mr. and Mrs. Dupree and Mr. McCaskey agreed to amend their official application to reflect this change from 7' from the rear property line to 15' from the rear property line.

Mr. Cavanagh did comment that the 4' deck would still encroach into the new requested setback. A discussion took place.

**Motion by Brian Stewart to grant BZA-2021-17v-- an appeal requesting a variance, submitted by Tim McCaskey, McCaskey Landscape & Design for John and Elisa Dupree from the Auburn Township Zoning Resolution, Article 4A.07(b)(1): Building Setback Requirements Side Yards Adjoining a Residential District (minimum setback) 50' feet required, 17' proposed for a new accessory building located at 17640 Munn Road, Auburn Township OH 44023 in a B-1 zoning district.**

**The motion was seconded by Lewis Tomsic. Vote: Stewart, yes; Tomsic, yes; Parker, yes; Ford, yes; and Hogan, yes. The motion was granted.**

**Motion by Robert Ford to grant the amended request BZA-2021-18v-- an appeal requesting a variance, submitted by Tim McCaskey, McCaskey Landscape & Design for John and Elisa Dupree from the Auburn Township Zoning Resolution, Article 4A.07(c)(2): Building Setback Requirements Rear Yards Adjoining a Non-Residential District (minimum setback) 50' required, 15' proposed for a proposed new accessory building located at 17640 Munn Road, Auburn Township OH 44023 in an B-1 zoning district. The motion was seconded by Lewis Tomsic. Vote: Stewart, yes; Tomsic, yes; Parker, yes; Ford, yes; and Hogan, yes. The motion was granted.**

At Frank Kitko's suggestion, the 30-day appeal period was again explained to the applicants. It was noted that the appeal period was thirty days from the date that the meeting minutes would be approved. It was also explained that the meeting minutes for tonight's hearings would be approved at the February 8, 2022, meeting.

Mr. and Mrs. Dupree and Mr. McCaskey left the meeting.

The meeting moved on to the next item on the agenda which was the Organizational Meeting.



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Doug Hogan welcomed the newest member to the Board of Zoning Appeals, Ben Timmons. All members welcomed Mr. Timmons. Mr. Timmons gave a brief overview of himself; basically that he grew up in Auburn Township and has lived in the Township most of his life, except for when he attended college and a brief period after college; he has four children, ages 13, 7, 5, and 2.

Nominations for the Chairman of the Board of Appeals were opened up. **Motion by Brian Stewart to nominate Doug Hogan to be the 2022 Chairman for the Auburn Township Board of Zoning Appeals. Mr. Hogan agreed to accept the nomination. The motion was seconded by Lewis Tomsic. Vote: Stewart, yes; Tomsic, yes; Parker, yes; Ford, yes; and Hogan, yes. The motion was passed.**

**Motion by Doug Hogan to nominate Lewis Tomsic to be the 2022 Vice-Chairman for the Auburn Township Board of Zoning Appeals. Mr. Tomsic agreed to accept the nomination. The motion was seconded by Brian Stewart. Vote: Stewart, yes; Tomsic, yes; Parker, yes; Ford, yes; and Hogan, yes. The motion was passed.**

**Motion by Doug Hogan to re-appoint Jane Hardy as the 2022 Secretary for the Auburn Township Board of Zoning Appeals. The motion was seconded by Lew Tomsic. Vote: Stewart, yes; Tomsic, yes; Parker, yes; Ford, yes; and Hogan, yes. The motion was passed.**

**Motion by Brian Stewart to approve the meeting minutes from the August 10, 2021, meeting. The motion was seconded by Lewis Tomsic. Vote: Ford, yes; Tomsic, yes; Parker, yes; Stewart, yes; and Hogan, yes. The motion passed.**

The next meeting will be February 8, 2022. There will be a case. The packets for the case were given to each member. Dr. Varley will be hearing the case in place of Mr. Ford, who recused himself.

New member paperwork was given to Ben Timmons.

**Motion by Lewis Tomsic to adjourn the meeting. The motion was seconded by Robert Ford. Vote: Tomsic, yes; Ford, yes; Parker, yes; Stewart, yes; and Hogan, yes. The motion passed.**

The meeting was adjourned.

Minutes submitted by

Minutes Approved on:

  
Jane Hardy, BZA Secretary

February 8, 2022

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Doug Hogan, Chairman