RECORD OF PROCEEDINGS

Minutes of AUBURN TOWNSHIP BOARD OF ZONING APPEALS—REGULAR Meeting

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 10148

Auburn Township Administration Building
11010 Washington Street

Held March 8, 2022 20 ____

~~BZA-2022-03v~~

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

MEMBER ABSENT: DAVID PARKER

MEMBERS HEARING THE CASE: Hogan, Tomsic, Stewart, Varley, 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-2022-03v--an appeal requesting a variance, submitted by Payne & Payne Builders for Doug and Laura Neal, from the Auburn Township Zoning Resolution, Article 4.03(k) Residential District Schedule, front yard setback, 65' required, 40' proposed for a single family dwelling to be located at **18055 St. James Place,** Auburn Township OH 44023 in an R-2 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.

Members present were Robert Ford, Doug Hogan, Lewis Tomsic, Brian Stewart, Michael Varley and Ben Timmons.

Member absent was David Parker.

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

Mr. Hogan noted that the official record for the 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:

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.

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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 case was on the agenda under New Business:

BZA-2022-03v--an appeal requesting a variance, submitted by Payne & Payne Builders for Doug and Laura Neal, from the Auburn Township Zoning Resolution, Article 4.03(k) Residential District Schedule, front yard setback, 65' required, 40' proposed for a single family dwelling to be located at 18055 St. James Place, Auburn Township OH 44023 in an R-2 zoning district.

The applicant was asked to present the case.

David Hess, 218 Ben Shaw, Aurora, Ohio, introduced himself to the Board and indicated that he was speaking for the applicant, Doug Neal. Mr. Hess is with Payne & Payne Builders.

Mr. Hess indicated that Mr. Neal has a hardship because of the physical topography that is located on the Neal property. He also explained that there are slopes on the property that need to be adjusted and that to accomplish this would require that a tremendous amount of fill would be needed. He further explained that they are trying to avoid using fill since the cost of the fill would add to the hardship that already exists on the property, and they want to place the house on undisturbed soil to avoid future issues.

Mr. Hess further explained that the proposed dwelling needed to be moved so the driveway would have a 5% slope instead of a 10% slope going down toward the road, and the ten percent (10%) amount of slope is not a good situation for a homeowner to have, especially in Northeast Ohio, during the winter time.

Mr. Hogan asked Mr. Neal if he was the property owner and if there was anything to add to his request.

Mr. Neal indicated that there are two other concerns, one being his concern with the integrity of the ground after using so much fill. He indicated that he prefers to be located on virgin ground. Mr. Neal stated that his other concern is the garage being on the high side of the structure and the possibility of the garage and driveway settling in ten years. Mr. Neal indicated he does not want to deal with the settling and potential cracking in the garage floor or cracking of the driveway, which he felt would also cost a lot of money in repair work. He again commented that he would like to build on virgin soil rather than building on an area where fill was added.

Mr. Hogan asked if there were other alternative location or plans.

Mr. Neal indicated that they considered building between the pond and the neighbor to the east of the Neal's property on Taylor May Road. Mr. Neal stated that this neighbor did not like that proposed location of the house.

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It was noted that the proposed dwelling location is 55-60' from the road and 40' back from the utility right-of-way setback.

Mr. Tomsic commented on the site plan elevations. First, Mr. Tomsic indicated that the distance of the 10% slope would not be as critical as previously presented. Mr. Tomsic explained the different elevations on the site plan. He also explained that the lighter lines on the site plan were the current elevations and the heavier, darker lines were the proposed elevations. He commented that this was important to understand so the Township just does not hand out a variance unnecessarily. He felt that the current elevation line at 1118' is 3' feet lower than the top of the pond and if you go back to 60', you would be above the level of the pond. A discussion took place.

Mr. Tomsic also suggested that the garage could actually be located on the other side of the house at the same 1124' elevation. Another discussion took place as to why this option was not viable for the current design of the dwelling, because the garage is in the basement and the master bedroom is over the garage.

Mr. Stewart indicated that the biggest concern is that when you pull onto St. James from Taylor May Road, with the proposed location of the house, when 2/3rds of the house is located in front of the 65' building line, all you will see is a house right at the edge of the road. He further explained that this is accentuated because of how the road curves on St. James Place. Mr. Stewart also commented that with the elevation of the house, it appears that you will see the top of the foundation, which is not going to have the same uniformity to the neighborhood.

Mr. Stewart also commented that with the proposed location of the house, it appears that you are going to see the bottom of the window sills, when looking at the house from the road. Mr. Stewart indicated that it is important to know what the overall vision of the dwelling will look like from the street.

Mr. Stewart also indicated that he had requested a rendering of the street view of the proposed dwelling, but was told that Payne and Payne does not provide renderings. Mr. Hess noted that at 65' back, where the house will be sitting down on the lot, the first floor will be at street level and visually at eye level you will see the windows of the first floor.

Mr. Neal explained that the backyard of the proposed dwelling has a ravine and stream for drainage from the pond and they are planning on building a bridge over the stream area that drains from the pond.

Mr. Hogan asked if the Neals have talked with the neighbors about the proposed location of the dwelling. Mr. Neal indicated that he did not have a chance to discuss this with the neighbors. Mr. Neal did indicate that the neighbor on Taylor May, Bryan Wilson, does not want the dwelling to be built east of the pond.

Mr. Neal indicated that he has owned the property for twenty-three years. He explained that he and his wife had anticipated building their house sooner, but six (6) kids later, four of which are older now, and his other children are 11 and 9, it is now time to build, especially since college is done.

Mr. Hogan again indicated that the proposed location sits very close to the road and that the variance request is a substantial request.

Mr. Hogan asked Frank Kitko, Auburn Township Zoning Inspector, what he felt about the proposed variance request. Mr. Kitko indicated that he did not have an issue but that the house could be built on the highest point on the lot and maybe they could consider flipping the orientation of the house.

Mr. Hogan explained that on behalf of the Board, that Mr. Neal should consider some of the suggestions that have been made during the meeting and possibly revise the plan and come back to the Board. Mr. Hogan further explained that Mr. Neal has equitable options to consider, one being to possibly flip the garage. Mr. Neal explained that because of the layout of the house and since the master bedroom was over the garage that he did not think this would be an option.

It was again explained that the variance is substantial. Mr. Hogan reiterated the available suggested options to the applicant. Mr. Hogan also explained that if a vote is taken tonight, that the outcome would be final. Mr. Hogan again asked that Mr. Neal talk over the other options. Mr. Hess remarked that, if the vote was taken tonight, that they could come back with another proposal.

Mr. Hogan indicated that if a "no" decision was made on the present request that to return with a new request was not an option. It was explained that the Board does not litigate a case a second time; that once the vote is taken, that is the final decision. It was also noted that another request would be considered res judicata and would not be permitted.

A discussion took place regarding potential deed restrictions on the property. It was noted that when the Neals purchased the property, their lot was considered an "outlot" that was sold by Kevin Finnerty as part of the St. James Place subdivision. He further explained that after their lot was purchased, that Mr. Finnerty used the money from the sale of their lot, to finish the road for St. James Place subdivision.

There were no further comments.

Motion by Doug Hogan to recess BZA-2022-03v, until the next meeting on April 12, 2022. The motion was seconded by Lewis Tomsic. Vote: Stewart, yes; Ford, yes; Varley, yes; Tomsic, yes; and Hogan, yes. The motion was passed.

The meeting moved on to the next item on the agenda. The Board members read copies of the previous meeting minutes.

Motion by Doug Hogan to approve the meeting minutes for BZA-2022-02c, SB Auto Mart LLC. The motion was seconded by Lewis Tomsic. Vote: Stewart, yes; Ford, yes; Varley, yes; Tomsic, yes; and Hogan, yes. The motion passed.

Packets for the upcoming case on April 12, 2022, were distributed to the Board members.

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

The meeting was adjourned.

Minutes submitted by

Jane Hardy, BZA Secretary

Minutes Approved on:

May 10, 2022

Doug Hogan, Chairman