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 April 12, 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 during the meeting.

Mr. Hogan noted that the official record for this hearing are the minutes recorded by the Board of Zoning Appeals Secretary and that the case file for BZA-2022-03v is part of the official record.

Chairman Hogan commented that the following case was on the agenda under Old 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.

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.

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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.

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.

Doug Neal reintroduced himself to the Board. He commented that he is currently living at 17555 Indian Hills Drive.

Mr. Hogan asked Mr. Neal if he had anything new to present to the Board.

Mr. Neal indicated that based on the last meeting, he went away with a few action items.

He explained that he took the time to meet with the current neighbors that live on St. James Place. Mr. Neal further explained that when he met with all five neighbors and that he has a paper with signatures from four of the five neighbors on the street. He also explained that four of the neighbors approved his proposed project. Mr. Neal also indicated that one of the neighbors is here at the meeting to speak tonight.

Mr. Neal informed the Board that there was nothing he was intending to change with his variance request, at this time.

Mr. Hogan indicated that at the last BZA meeting, the Board had many concerns including where the septic would be installed at. Mr. Hogan also indicated that Board members were asking for changes to the project, including a change for the home to be turned around on the property.

Mr. Neal indicated that from building practices, it does not make sense to build toward the bottom of the hill, which is located on the property. Mr. Neal further explained that he did not want to build the house behind the hill, because if it was located behind the hill, you would not be able to see the house from the road. Mr. Neal also commented that all the other locations on the lot, he felt in his opinion, would be downhill from the water.

Mr. Hogan asked if any of the neighbors on St. James Place were present at the meeting. Chris Meyer, 18050 St. James Place, introduced himself to the Board and indicated that he was present at the meeting to ask that the variance request be denied.

Mr. Meyer indicated he lives directly across the street from where the Neal house is proposed to be built. Mr. Meyer also commented that he appreciated the opportunity to be at the meeting and that he does not like that he seems to be not so neighborly.

Mr. Meyer indicated that Mr. Neal is seeking a significant reduction in the required set back. He indicated that the proposed reduction is 38%, which is substantial. He further explained that this is a problem because Mr. Meyer's house is on the straight part of the street and that this lot is directly across from Mr. Meyer's house.

Mr. Meyer also informed the Board that he did research and understands that townships have resolutions instead of ordinances. He further commented that the zoning was created on St. James Place for privacy, comfort and value. Mr. Meyers felt that "because of the benefits of zoning, Ohio does not pass out variances very much."

Mr. Meyer indicated that he wanted to explain five to six points that he had. He further explained that the first point being that the house the Neals want to build, can be built in compliance with current zoning, so we can accomplish the goal of building the house and being compliant.

The second point is the variance is substantial and should not be granted because it is substantial.

The third point is Mr. Neal knew about the zoning when he bought the lot.

The fourth point is, all other houses are located on the cul-de-sac and are set way back off the road and the location of the Neal house will not impact them. Mr. Meyer indicated that his dwelling is the closest to the road and the variance will greatly impact him.

Mr. Meyer further explained that front setback distances provide for privacy and comfort. He also commented that if the dwelling is moved closer to the road, that it will be closer to his house. Mr. Meyer also indicated that all the trees are going to be leveled when the house is built. He further commented that, if the house was built where they plan to build it, it would be too close to the road and there will be no trees in front of the house.

In addition, Mr. Meyer commented that the project will change the nature of the cul-de-sac, in that the house will be closer than all the other dwellings on the road and will impact the semi-private and semi-rural environment; and above all, it also impacts the value of Mr. Meyer's home.

Mr. Meyer further commented that given the language in our zoning and the spirit of it and based on the aforementioned points, Mr. Meyer did not think that this variance should be allowed.

Mr. Stewart asked Mr. Meyer, "did he build his house?" Mr. Meyer indicated that he did not build the house, but he bought the house in 2013.

Mr. Neal also commented that he would not be directly across from Mr. Meyer's dwelling. He explained that he is in the corner of the lot. Mr. Neal commented that you can see the image from Zillow.

Mr. Neal further commented that he understands the need for privacy, because that is probably why Mr. Neal lives out here.

Mr. Neal also commented that he removed the front porch off the original design of the house, so that the appearance of the house will not be as close to the road. Mr. Neal explained that they would not be using a front porch anyways, because he will be enjoying the back yard.

Mr. Neal also indicated that they have plans to put some foliage back between the house and the road. Mr. Neal also noted that none of the livable space in the house is in the front, it is located facing the backyard.

Mr. Neal also commented that the style of the dwelling, that is being constructed, will fit the style of the neighborhood. He again commented that he plans on keeping trees on the lot and will probably plant more pine trees for additional privacy.

Mr. Neal did comment that the trees in the front yard will be taken down, whether the house is built at forty feet or at sixty-five feet. He indicated that he did not want a tree to fall on his house.

Mr. Neal also commented that he was not aware of how the 65 foot setback was measured. He thought this front setback was measured from the property line and not the road right of way. Mr. Neal insisted that he did not knowingly go into this project with the knowledge that the set back is larger than what he thought.

Dr. Varley asked if there was a reason St. James Place did not have an HOA. Mr. Meyer did not know why there was not one. Mr. Meyer indicated that the only thing that the neighbors have talked about before was the need to maybe contribute to pay to dredge the pond.

Mr. Neal commented that the pond is his responsibility to maintain and he does not see a need to have the pond dredged.

Mr. Stewart commented that the Neal property is not necessarily part of the St. James Place subdivision, but rather an outlot.

Mr. Hogan reiterated that at last meeting the Board asked that you look at your plans and see if they could be adjusted and that you were told that it would be difficult for this variance request to be approved as the plan was presented.

Mr. Neal commented that he is aware that there are things called the Duncan factors that impact this, but part of this request is the unique feature of the property. He further commented that variance allowances can be granted based on the uniqueness of the topography.

Mr. Stewart asked Mr. Meyer if his privacy is the main concern or the aesthetics of what Mr. Meyer will be looking at.

Mr. Meyer indicated that there are three primary factors for his concern and they are his privacy, the lower property value of his home, and what the project is going to do to the street as a whole. Mr. Meyer commented that he is aware that the other neighbor's signed off, but the other neighbors are nowhere near where Mr. Neal's proposed home will be located.

Mr. Tomsic commented that Mr. Neal did state previously that the house could meet zoning, but it would require more fill and additional costs, correct? Mr. Neal did comment that it was doable, to build the house to comply with the zoning setback.

Mr. Neal asked "why didn't Mr. Meyers object before." Mr. Meyers indicated that he was not at the last meeting.

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Dr. Varley also confirmed with Mr. Neal that the house could comply with zoning.

Mr. Hogan asked if Mr. Kitko had any comments. Mr. Kitko did not have any comments.

Fire Chief John Phillips did not have any comments either.

With there being no further comments, Mr. Hogan asked for a motion.

Motion by Brian Stewart to grant 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 motion was seconded by Robert Ford. Vote: Ford, yes; Stewart, yes; Varley, no; Tomsic, no; and Hogan, yes. The motion was granted.

Mr. Hogan again explained the appeal period to the applicant. The Board will approve the minutes for tonight's hearing at the May 10, 2022, meeting and the decision for tonight's case can be appealed by a party of interest within thirty (30) days from the date the minutes are approved.

Mr. Hogan proceeded to the next item on the agenda under new business.

Minutes submitted by

Jane Hardy, BZA Secretary

Minutes Approved on:

May 10, 2022

Doug Hogan, Chairman