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 ~~BZA-2022-11v and BZA-2022-12v~~ December 13, 2022 20

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

MEMBER ABSENT: DAVID PARKER, BEN TIMMONS ,

MEMBERS HEARING THE CASE: Hogan, Tomsic, Stewart, Ford, Varley

CASE FILE: The case file is included as part of the official record, and also includes the Auburn Township Zoning Resolution

BZA-2022-11v--an appeal requesting a use variance, submitted by Jonathan & Loren Martin from the Auburn Township Zoning Resolution, Article 5.05(b) Prohibited Uses in All Zoning Districts Short term rental of a dwelling, in whole or in part, involving transient occupancy… located at 16970 Auburn Road, Auburn Township, Ohio 44023, in an R-2 zoning district.

BZA-2022-12v—an appeal requesting a use variance, submitted by Jonathan & Loren Martin from the Auburn Township Zoning Resolution, Article 5.01(a) …There shall be no more than one (1) single family detached dwelling on a lot and 4.03(k) Residential District Schedule, Permitted Main Uses: Single Family Dwellings. On a parcel with two dwellings located at 16970 Auburn Road, Auburn Township, Ohio 44023, in an R-2 zoning district.

The meeting was called to order by Chairman Doug Hogan at 7:03 PM. Roll call was taken with the following members present: Mr. Ford, Mr. Hogan, Mr. Stewart, Mr. Tomsic and Dr. Varley. Mr. Timmons and Mr. Parker were absent.

The Pledge of Allegiance was recited.

Mr. Hogan swore everyone in who was planning on testifying.

Chairman 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.

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.

Mr. Hogan also commented that the official record for this hearing (BZA-2022-11v and BZA-2022-12v) will be the minutes recorded by the Board of Zoning Appeals Secretary and as part of the official record is the case file and the Auburn Township Zoning Resolution.

Mr. Hogan proceeded to announce the new business which is as follows:

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The applicants were asked to present the case.

Lauren Martin introduced herself to the Board. Mrs. Martin indicated that she wanted to present the facts for her argument for their requests. Mrs. Martin indicated that they live at 16970 Auburn Road and have owned the property for almost seven (7) years and they have lived there for about three years. She indicated that there are two houses on the property with separate septic systems for both structures.

She further explained that they lived in the subject little house that is on the same property while they rehabbed the big house.

Mrs. Martin also indicated that her neighbors do not have any problems with the request (2022-11v). [A letter was submitted by a contiguous property owner].

She also commented that short-term rentals were not prohibited by Auburn Township until 2020 and that they owned the property before that date.

She further explained that when they purchased the property, the big house was in terrible condition. She further commented that she and her husband have really improved the house and the property for the benefit of the area. She also explained that the big house was in such bad condition it should have been torn down but they decided to rehab the house instead.

Frank Kitko, Auburn Township Zoning Inspector, indicated that the subject smaller structure has been on the property but he is not sure when or how it was converted into living space, it just happened and that this original structure had not been built to be used as a dwelling. Mr. Kitko thought it may have housed some farm hands who were working for a previous owner when the property was an active farm. Mr. Kitko also clarified that short-term rentals were never permitted in Auburn Township.

Mr. Kitko indicated also that he does not know how the Health Department issued a permit for the little structure's septic; because historically the Health Department has always only allowed one septic system and one house on one parcel.

Mrs. Martin was asked if they had done their due diligence before they used the little house as a short-term rental in the R-2 zoning district. She was also asked how the property was presented to them by the realtor before they purchased the property. It was noted that the house was sold at a sheriff's sale.

She commented that the realtor did not really present the house in any way other than the house was in such poor condition and they were allowed to look at it. She also commented that they bought the property with the intent to have income off the smaller rental house.

It was also noted that the smaller house was part of the foreclosure. Mrs. Martin indicated that since the smaller house was already existing they felt they would be allowed to rent it out.

Mr. Tomsic commented that what they are doing is not legal according to Auburn Township's zoning. He further explained that the zoning rules are made with the intent of keeping and maintaining the current values that exist in the area and for health and safety of the homeowner and community.

Mr. Tomsic also pointed out that with short-term rentals that transient people rent short-term rentals and they bring friends and they may not have the same values toward the neighborhood and property as residents currently living in the area. He also commented that the increase in the police blotter activities in the local papers are proof of the additional crime that occurs with commercial uses.

Mrs. Martin was asked if they considered renting long-term; where the renters would actually be residents and not transients.

Mrs. Martin indicated that they did not want to rent the property long-term. She further explained that they make more money with it being a short-term rental and that they need the income from the short-term rental. She explained that this is her only source of income.

It was also explained that the other variance request (2022-12v) is that there are two dwellings on one lot which is not permitted; therefore, the small house cannot be used as a dwelling nor rented out long-term.

Mr. Hogan commented short-term rentals are not a listed use in the Auburn Township Zoning resolution; therefore, they are not a permitted use and it has been that way. Mr. Hogan also commented that short-term rentals fall into the category of a commercial use like a motel. Mr. Hogan also read into the minutes the definition of a motel "A building in which temporary lodging is provided and offered to the public for compensation", which is what the Martins are doing with the little house.

Mr. Martin indicated that with them living there in the big house, they are able to monitor the rental structure. Mr. Martin also commented that they are a grandfathered use and it is a stretch for the rental house to be a commercial operation like a motel. A discussion took place regarding a motel being the same thing as a short-term rental.

Mr. Hogan continued to explain that the property is located in an R-2 residential district and the use of this structure does fall under the definition of a motel and the use is not grandfathered because it was never a permitted use. He also commented that how the property is currently being used is in violation of Auburn Township's Zoning and does need to stop.

Mr. Hogan also commented that if the Martin's are claiming this to be a hardship that they need to be prepared to submit evidence to that effect.

Mr. Stewart asked if the Martins were planning on selling the property. He explained that if the variances are granted, the variance stays with the property and that could be problematic with a new owner. Mr. Stewart also indicated that a short-term rental through the AirBNB or Vrbo site makes this a commercial operation because they are running it as a business and not as a residence.

Dr. Varley pointed out the zoning map hanging on the wall. He explained the purpose and intent of why zoning districts are established. He also commented that this property is in the R-2 zoning district which was established to provide for residential neighborhoods of a rural nature and with the specified densities. He further explained that the use of the structure for short-term rentals is a commercial use and not permitted in a residential district.

Mr. Kitko commented that it appears that permits to convert the smaller structure may not have been pulled; and if it was previously being used agriculturally, that exemption ceased to exist when the agricultural use ceased many years ago. He explained it was never a permitted use so it cannot be grandfathered.

Mr. Kitko also explained that short-term rentals in a residential district were never permitted in Auburn Township; therefore, according to the Zoning Resolution, if it is not a listed use it is not a permitted use.

Mr. Hogan noted that the Fire Chief was not present.

Mr. Martin indicated that they did have an electrical inspection done on the smaller structure. Mr. Hogan explained that an electrical inspection had to be done to have the power turned back on. He also noted that since the rental structure is being used commercially that there should be a commercial meter for that structure.

Mr. Hogan asked the Martin's if they wanted to withdraw their request.

The appeal process was again explained to the Martin's. Mrs. Martin did not want a vote taken this evening that she needed to discuss this further, outside of the meeting.

A discussion took place regarding the claims that were made about bad things happening in Auburn Township. Mr. Tomsic indicated that township zoning is based on the health and welfare of the people of the community and a commercial use in a residential district just invites problems.

Frank Kitko, Zoning Inspector, again tried to explain that a variance stays with the property and that conditions cannot be placed on the variance request.

A discussion took place regarding splitting the property. Mrs. Martin indicated that they did not have enough road frontage and it would be difficult to split the property because of the location of the barn. It was suggested that perhaps if a variance was needed for a lot split that might be a viable option to pursue.

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Mr. Hogan noted again that as the property currently exists, the small house cannot be rented out either short or long-term.

Mr. Martin indicated that his personal experience with long-term rentals has not been good because the tenants for a long-term rental end up trashing the property and it is more work to maintain the property for the owner, and that is why they want to continue with short-term rentals.

Mrs. Martin asked that a vote not be taken, that they would be leaving the meeting. Mr. Stewart asked what the proper protocol was for this. The meeting protocol was explained. The Martins asked for the meeting to be recessed so they could consider some options.

Motion by Brian Stewart to recess BZA-2022-11v and BZA-2022-12v until the January 10, 2023, meeting. The motion was seconded by Lewis Tomsic. Vote: Varley, yes; Tomsic, yes; Ford, yes; Stewart, yes; and Hogan, yes. The motion was granted.

Board members reviewed the meeting minutes from the previous meeting on October 11, 2022.

There was no changes or corrections.

Motion by Doug Hogan to approve the meeting minutes from October 11, 2022. The motion was seconded by Michael Varley. Vote: Varley, yes; Tomsic, yes; Ford, yes; Stewart, yes; and Hogan, yes. The motion was granted.

The next meeting will be January 10, 2023. It will be the Organizational Meeting.

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

The meeting was adjourned.

Minutes submitted by

Minutes Approved on:

February 7, 2023

Jane Hardy, BZA Secretary

Douglas Hogan, Chairman