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-2024-08v~~ May 14, 2024 1 20

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

MEMBER ABSENT: LEWIS TOMSIC, DAVID PARKER (LATE)

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

CASE FILE: The case file for BZA-2024-08v is included as part of the official record, along with the Auburn Township Zoning Resolution

Mr. Ford moved on to the next item on the agenda.

Under new business was:

BZA-2024-08v--an appeal requesting a variance, submitted by Scott E. and Rachel MacWhinnie from the Auburn Township Zoning Resolution, Article 4.03(k): Residential District Schedule: R-2, Permitted Main Uses—Single Family Dwelling and 5.01(a) Dwellings: Maximum Densities: . . . in the R-2 Zoning Districts, the total number of dwelling units. . . shall be no more than one (1) single family detached dwelling on a lot for an existing second dwelling located at 10719 Bartholomew Road, Auburn Township Ohio 44023 in an R-2 zoning district.

Mr. Ford verified that everyone who was planning on testifying had previously been sworn in. He also noted that the official record of the meeting will be the minutes recorded by the Board of Zoning Appeals Secretary; and that as part of the official record, is the case file for BZA-2024-08v and the Auburn Township Zoning Resolution.

Scott and Rachel MacWhinnie were asked to present their case.

Scott and Rachel MacWhinnie introduced themselves to the board members.

Rachel MacWhinnie also distributed a seven-page handout to the Board of Appeals members.

The handout will be added to the official case file. The handout included the following:

1. A copy of Rachel MacWhinnie's opening statement.
2. An invoice from Small Hands Big Dreams Learning Center--$2,740.
3. A second invoice from Small Hands Big Dreams Learning Center—$2,024.
4. A letter signed by three (3) adjacent property owners (signatures not legible)
5. A voice mail (written on paper) from John Clark (adjacent property owner) in support of the MacWhinnie's variance request.
6. A letter from electrician Hunter Tice that the wiring in the "guest house" is sufficient.
7. A letter from the same Hunter Tice, dated April 6, 2024, that he previously lived in the "guest house" at 10719 Bartholomew, when the previous owner owned it.

Rachel MacWhinnie indicated that she wanted to read her statement to the Board.

Fighting back the tears, Rachel MacWhinnie read the statement as follows:

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Dear Zoning Board Members.

Thank you for your time and consideration regarding our variance request. This is for Article 4.03(k) and 5.01(a) pertaining to the second dwelling located on our property at 10719 Bartholomew Road, Auburn Township. OH 44023.

We moved home from Arizona to Ohio in August 2022 in anticipation of having our second child. After spending some time out west we decided we wanted to raise our family in beautiful Northeast Ohio, surrounded by close friends and family. We purchased our forever home in September 2022. We were excited about the second dwelling located on the property and how we could utilize it for personal use or for friends and family.

We were living in Arizona during the time of purchase. Life was a little hectic preparing for the sale of our home in Arizona, packing and moving across country with our one-year-old and a baby on the way. It was a relief that everything was going well with our anticipated purchase. There were no zoning issues reported by the owners in the residential property disclosure form or by the appraiser. The title company didn't catch the violation and our realtors, who have been in the business thirty plus years, report they have never come across a zoning issue in our Township. It was a huge surprise when we were notified of the violation.

We discussed the zoning violation with our adjacent property owners and there are no objections to having the variance granted. The building was already being used as a second dwelling prior to our purchase. We have taken multiple actions to make sure the second dwelling is fully operational and safe. We contacted the County about the septic and they report no further action is needed. We had an electrician inspect the wiring with no issues. We contacted the fire department and asked about getting a fire inspection and were told it is not necessary.

We understand and respect the need for zoning regulations to keep Auburn Township a great place to live. Had we known about the zoning violation we would not have purchased the property. This violation creates unnecessary hardship as we purchased our property with the understanding we may use all facilities. We did not upgrade the accessory building ourselves and feel it is a reasonable request that we may continue to use it given the circumstances. Thank you again for your consideration. Respectfully, Scottie and Rachel MacWhinnie

Mr. MacWhinnie commented that they have a lot invested in the property.

He proceeded to summarize the information that was in the handout.

Mr. MacWhinnie indicated that some of the contiguous property owners have no objections to their request as represented by the submitted signed letter in the packet (the signatures were not legible though).

He commented that they have had the structure inspected by a home inspector and the home inspector did not find that there were any safety issues. Mr. MacWhinnie indicated that there was an issue with a water faucet and that was since fixed. (no copy of the inspection report was submitted).

Mr. MacWhinnie further commented that there were no electrical issues; but there was no handrail going upstairs and that handrail has also been installed. Mr. MacWhinnie also commented that when he contacted the Auburn Volunteer Fire Department for a fire inspection, he was told an inspection was not required.

He also commented that the septic was inspected by Mason with Auburn Bainbridge Excavating and there were no issues with the tie-in to the current dwelling's septic. Mr. MacWhinnie indicated that even though there was no permit issued by the Health Department to tie the back structure into the septic for the main house, Mason verified that it was done correctly and the Geauga County Health Department confirmed that adding the additional bedroom was approved; even though the original septic was sized for a 4-bedroom dwelling.

Mr. Ford asked the MacWhinnies if this property had been purchased from Gary Ostoyic because if it was, then he had been in that back structure before and it was in fact built as a pole building, that was used as a man cave. Mr. Ford reiterated that the back building was not constructed to be a dwelling.

Brian Stewart stated that he visited the back structure on Sunday, May 12, 2024, and the person currently living in the structure invited him in and showed him around. Mr. Stewart commented that there are two bedrooms in the dwelling and both are currently being used by the occupants living there. Mr. Stewart confirmed that the back building is not an accessory structure but a dwelling.

Mr. Stewart further expressed his concern that it is being used as a dwelling. He stressed that there have been no inspections from the Geauga County Building Department on the integrity of the construction of the structure. Mr. Stewart explained that the structure is a dwelling and the MacWhinnies are just assuming that it meets the building code. Mr. Stewart commented again that it is a pole building and he indicated that the MacWhinnies need a structural engineer or a qualified architect to verify the structural integrity of the building. It was built as a barn in 2008.

The MacWhinnies noted that there were disclosure papers in the settlement papers when they bought the house, but the zoning violation was never listed on the disclosure papers.

Mr. Hogan asked if an attorney reviewed the paperwork. The MacWhinnies indicated that an attorney had not. Mr. MacWhinnie did indicate that the title company reviewed the paperwork.

Mr. Hogan explained that an attorney could have verified zoning and confirmed that the additional use on that property was actually not a permitted use.

Mr. Hogan also commented that he visited the location today and there was only one mailbox and one address which would indicate legally there was just one dwelling, but yet there is two.

Mr. Hogan asked if there was a lease between the MacWhinnies and the people living in the second dwelling on the property. Mr. MacWhinnie said there is no formal lease. It was explained that the person, living in the second dwelling, is a friend of the MacWhinnies.

The MacWhinnies further explained that since they pay an exorbitant amount of money for childcare, $655 a week, that the friend who is living in the back structure, helps with their childcare; she is also an avid gardener who also helps in the yard. The MacWhinnies commented that they let her live there—"it's an exchange of services."

Mr. Hogan then asked the renter [who was in the audience] directly if she was aware that without a lease, she could be evicted immediately, she responded that she understood.

Mr. MacWhinnie commented that he had spoken directly with the previous owner Gary Ostoyic prior to the property transfer. Mr. MacWhinnie said the reason he spoke with him was that he knew Gary was a hunter and Mr. MacWhinnie wanted to get information about the public hunting grounds around Auburn. Mr. MacWhinnie indicated that Gary was also talking about the property and how the MacWhinnie's would be able to have family and friends stay in the back building because he previously rented it out. Mr. MacWhinnie commented that he took the man for his word when he said that they could continue using the structure in that way.

Mr. Ford again explained and stressed that the building is illegal, as it is being used; it was not constructed to be a dwelling for people to live in it. He further explained that the variance stays with the property forever and that structure could even be torn down and replaced with a much larger dwelling, if the variance is granted.

Mr. Stewart also confirmed that the variance stays with the property forever. Mr. Stewart commented that the structure could be turned into anything, a short-term rental which is not allowed. Mr. Stewart commented that the MacWhinnies still have their home on the property, which is a very viable legal use of the property.

The MacWhinnies were asked "if they felt there was a misrepresentation on the settlement papers, when they purchased the property, regarding the zoning violation, why did the MacWhinnies not pursue that with the previous owner or the realtor?"

Mr. MacWhinnie commented that they wanted to peacefully resolve this situation and they felt that applying for the variance would be the easier way to approach it.

For the record, Jane Hardy, Assistant Zoning Inspector, commented on a telephone conversation she had with Rachel MacWhinnie. During the telephone conversation, Mrs. Hardy indicated that Rachel MacWhinnie stated that when the MacWhinnies were doing an informal walk through on the property with the previous owner, the realtor, and her father-in-law, the previous owner at that time, "casually mentioned that the back building was built without permits." During the conversation, Mrs. MacWhinnie was asked if that "did not send up red flags." Mrs. Hardy's statement was interrupted by Rachel MacWhinnie who indicated that the conversation never happened and that this conversation must have be confused with someone else's conversation.

The MacWhinnies contended that this is an unnecessary hardship for them, since they overpaid for property that they cannot use and there is no justice in this for them.

Mr. Stewart commented that they have their house to live in, which according to papers submitted with their variance request application, was advertised and purchased as a single-family dwelling, with one dwelling on the property.

Mr. Hogan commented, "let the buyer beware."

Mr. Ford asked the Auburn Volunteer Fire Chief John Phillips if he had any comments or concerns. Chief Phillips indicated that there are standards for home building that apparently were not followed. The Chief commented that there are wind and snow loads for the roof and without proper inspections none of those standards had been verified.

Mr. Hogan asked how the structure was described on the MacWhinnie's homeowner's insurance policy. It was noted that it was listed as an unattached garage.

Another comment was made that you have someone living in a space that is not a dwelling.

Mr. MacWhinnie commented that he has an umbrella policy for one million dollars on the property.

Mr. Ford indicated that it appears that this whole situation was "misrepresented right from the get-go."

Mr. Ford again explained the appeal process that was reviewed at the beginning of the meeting. He explained that in the event that this variance does not pass, when the vote is taken, it can be appealed.

He commented that the minutes from this meeting will be approved at the next Board of Zoning Appeals meeting on June 11, 2024, and that the appeal period is thirty (30) days from the date that the minutes are signed.

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Mr. Stewart again commented on the safety concerns with the structure and Auburn Township's liability knowing that the structure was never inspected to be a habitable dwelling.

Mr. Stewart also indicated that the electric is a huge safety concern. He also explained that the Board has heard many times, "this is our forever home," five (5) years from now the property is sold again and because the variance is granted, the property can be utilized for rental property, an air bnb, intentions are great, but life happens.

Frank Kitko, Auburn Township Zoning Inspector, was asked if he had any comments. Mr. Kitko commented that he is in agreement with all the concerns about safety; he was in fact very concerned that people were living in that structure and it was never inspected to be a habitable structure.

Mr. Kitko also commented that the rule of thumb is one (1) parcel, one (1) dwelling and one (1) septic. He noted that currently the back building is being used as a dwelling for renters, and there are two (2) bedrooms, the original septic for the front house was set up for a 4-bedroom dwelling. Apparently, the Health Department is allowing a 5th bedroom because of the type of soil the leach field is in, but the septic system has not been evaluated for the 6th bedroom, since there are now two (2) bedrooms in the back structure and not just one.

Mr. Kitko also noted that this residential zoning district was established to provide for residential neighborhoods of a rural character and it was created to be a residential rural area. Mr. Kitko further explained that this is not a situation that can be a grandfathered use either; he further explained that zoning does not grandfather illegal uses. It was noted that it appears that the previous owner converted, without inspections, the back accessory structure to a dwelling and rented it out illegally. This does not entitle the use to continue and it does not qualify for a grandfathered use. Zoning does not grandfather illegal uses.

Mr. Kitko commented that however it happened, there are two dwellings on this property and simply put, this is not permitted in Auburn Township. Mr. Kitko felt that granting the variance would be an injustice and would destroy what the residential district is set up for, it would not promote the spirit and intent of zoning.

Mr. Kitko also commented on a call that the Zoning Office received from a contiguous property owner, who lives on Auburn Glen. The caller's concern was that a larger home could eventually be built and she does not want to see a larger structure. The caller indicated that her back yard abuts the MacWhinnie's rear property line where the accessory structure is located.

Mr. Kitko also pointed out that currently the structure appears to be located too close to the property line, if it is considered a dwelling, the required side setback is a 30' for a dwelling, 15' for an accessory building. Mr. MacWhinnie questioned how that was measured. It was noted that the county system was used.

Mr. Ford asked Mr. Kitko, if in the event this does not pass what would happen. Mr. Kitko explained that they have the right to appeal the decision to Common Pleas Court. Once it is appealed, it may go to a judgement entry and maybe conditions could be placed on the situation, but that would be up to the judge.

Mr. Kitko also commented that if the variance is granted, and something happened in that back building, because the Township allowed someone to live in it, the Township may be liable, since the Township knew it wasn't inspected and approved for human habitation.

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Mr. Kitko was asked what needed to be done to the structure to allow it to be used as a non-dwelling. It was noted that an accessory structure is allowed a commode and a hand sink; the kitchen would need to be removed and the plumbing would be for only the sink and commode.

There was no other comments or questions.

Motion by Brian Stewart to grant BZA-2024-08v--an appeal requesting a variance, submitted by Scott E. and Rachel MacWhinnie from the Auburn Township Zoning Resolution, Article 4.03(k): Residential District Schedule: R-2, Permitted Main Uses—Single Family Dwelling and 5.01(a) Dwellings: Maximum Densities: . . . in the R-2 Zoning Districts, the total number of dwelling units. . . shall be no more than one (1) single family detached dwelling on a lot for an existing second dwelling located at 10719 Bartholomew Road, Auburn Township Ohio 44023 in an R-2 zoning district.

The motion was seconded by Ben Timmons.

Vote: Stewart, no; Timmons, no; Hogan, no; Ford, no; and Varley, no.

The motion was denied.

Mr. Ford explained again that the BZA's decision will not be final until 30-days from the date that the meeting minutes are approved and that the minutes for this hearing will be approved on June 11, 2024.

Mr. Ford moved on to the next item on the agenda.

Minutes submitted by

Minutes Approved on:

June 11, 2024

Jane Hardy, BZA Secretary

Robert Ford, Chairman