

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 19, 20 18

The Danbury Township Board of Zoning Appeals was called to order at 6:30 p.m. by Chair, Sherry Roberts, at the Danbury Township Hall. The Pledge of Allegiance was recited. The roll call showed the following members present: Ms. Sherry Roberts, Mrs. Loretta Grentzer, Ms. Sharon Michael, Mr. Joseph Fetzer and alternate Ms. Cathy Bertovich. Mr. Brad Bauer was excused. Also present were Kathryn Dale, Zoning & Planning Administrator. Visitors present were Peter Corrado, Tom Dearth, Bill Moon, Tom & Christine Steinbrick, Cole Steinbrick, Marnie & Dan Kaminski, Ron Koenig, Anna Baxter, Robert Bishop, Michael & Jean Lonsway and Katie Binkley.

Mrs. Dale read the rules of order for the meeting proceedings.

The Chair asked Mrs. Dale if all the documents relating to the case had been received and were in proper order. She indicated that they were. The Chair swore-in the Zoning and Planning Administrator, Kathryn Dale.

Mrs. Dale stated case **BZA-2018-149** for **171 Lynn** was opened but not closed at the August 15, 2018 meeting and was scheduled to continue to tonight's hearing date. However, the owner and applicant has requested that it be further postponed to October 17, 2018 while they make some changes to their plans and continue to work things out with Lakeside.

The Chair asked Mrs. Dale to introduce the first case of the evening.

Adjudication Hearing
Case BZA #2018-155
344 Vine

Request for an Area Variance to Section 5.6.8 to allow for a 6'5"-7' high privacy fence from natural grade on the north, side property line where 4' is the maximum allowed height and a 7' high privacy fence from natural grade on the west, rear property line where 6' is the maximum allowed height. Jack & Pam Allen, Owners/ Tom Dearth, Agent.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none.

Ms. Michael moved and Mr. Fetzer seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Mrs. Dale shared that this case was tabled in August due to a need to verify the height of the fence, specifically in regards to Section 5.6.5. In September 2017, the owners and contractor received a zoning permit (#2017-190) to tear down the former house on the property and rebuild a new single-family home. The plans attached to that permit shoed 104' of vinyl fencing; 48' of 6' high was to be located on the west property line and 56' of 4' high fencing was to be placed on the north property line. However, at the time of installation, the same sized fencing was installed on both property lines. There was a stone wall on the north and west sides of the property. Some of this stone wall has remained, but a better engineered retaining wall was constructed along much of the northern property line. In an effort to even out the difference in grade change, some of the property was filled-in and raised as much as 1'4". As such, the fence, while 4'10" high for most of the body of the fence, once the spacing below the fence and the post caps are taken into consideration the fence overall is 5'6", but as Section 5.6.5 indicates, the 1'4" of fill has to also be taken into consideration to measure from natural grade prior to the modifications, causing the final height of the fence to be between 6'5"-6'10". The request is being made for 7' for simplicity. In summary, due to the fill and measuring to natural grade, only a 2'8" fence structure or 4'8" fence structure along the patio would have been allowed. Fence panels typically come in 4' & 6' heights. Presumably the applicant will argue that the retaining wall was not done for the primary purpose of increasing the elevation of the fence, but rather to hold back fill and support the house foundation due to it being a sloping lot and so as to prevent erosion or runoff on the neighboring property. Being a corner lot, the property owner has the right to choose the west or north property line to be the rear-yard. Mrs. Dale concluded by reviewing the decision standards the Board will be considering.

Tom Dearth, Contractor/Agent on behalf of the property owners, 518 N. Erie Beach Road came forward and was sworn in. The Chair presented him with the packet of documents provided for consideration and he attested that it was as they submitted. Mr. Dearth indicated that he had 3 letters, one from the homeowner and two from adjoining neighbors that he would like to submit to the Board. Ms. Dale stated these will be entered into the record as Applicant's Ex. 3. Mr. Dearth clarified that the neighbor letters are from the property to the north (Klenk) and one from the west (Richards). Mr. Death said that there was a downward slope going from the street on the south to the north and they needed to install a retaining wall to hold everything back. He stated they installed the fence for

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privacy. Mr. Dearth said the one property to the west is not well kept and the owners didn't want to have to look at that all the time. He said they also wanted some privacy while out on their patio. He said they also want to be able to keep their dog in as well.

The Chair asked if there were any questions from the Board. Ms. Grentzer asked if landscaping was an option. Mr. Dearth said not really. He said they might be able to plant some arborvitaes to the west because that is the only area where there is some landscaping at present. On the north side though, it's all concrete due to the patio and the retaining wall. There were no other questions from the Board.

There was no one else with standing who wished to testify.

Ms. Grentzer made a motion to close the public comment segment of the hearing, seconded by Ms. Bertovich. All were in favor and the motion carried.

Mr. Fetzer motioned to recess into executive session to deliberate the merits of the case. Ms. Bertovich seconded the motion and the roll call vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Ms. Bertovich – yes and Ms. Roberts - yes. The motion carried and the Board recessed at 6:46 p.m.

Ms. Grentzer moved and Mr. Fetzer seconded the motion to reconvene. The roll call vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Ms. Bertovich – yes and Ms. Roberts - yes. The Board reconvened at 7:04 p.m.

The Chair asked Mrs. Dale to read the Findings of Fact for the Appeal request BZA Case #2018-155:

With regard to BZA-2018-155 being a request for an Area Variance to Section 5.6.8 to allow for a 6'5"-7' high privacy fence from natural grade on the north, side property line where 4' is the maximum allowed height and a 7' high privacy fence from natural grade on the west, rear property line where 6' is the maximum allowed height for the property located at 344 Vine:

1. The property in question **will** yield a reasonable return and **can** used beneficially without the variance because the property can continue to be used for a single-family residence and fencing is permitted on the property.
2. The variance is **not** substantial because it provides privacy from the windows of the house next door and the top portion is opaque with lattice work so it is not a solid fence.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because the fence is not disproportionate due to the circumstances in elevation change of the lot.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.).
5. The property owners stated they **did** purchase the property with knowledge of the zoning restriction but did not realize the fence they selected would have exceeded the fence height requirements.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by installing landscaping, installing a shorter fence or providing no fence at all.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance because the fence is providing privacy without being obtrusive.

Mr. Fetzer moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (2) (3) (7) weigh more heavily to show that:

- a. Practical difficulty is sufficient to warrant granting the Variance requested.
- b. There is a preponderance of reliable, probative and substantial testimony; and
- c. There is evidence that **does support** the applicants request for a variance.

Therefore, the Variance should be accordingly **APPROVED**.

Motion Seconded by: Ms. Grentzer. Roll Call Vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Ms. Bertovich – yes and Ms. Roberts - yes. Vote 5-0, the motion passed.

The Chair stated the application has been approved and the Applicant may pick up their permit following the next Board meeting.

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The Chair asked Mrs. Dale to introduce the second case of the evening.

Adjudication Hearing
Case BZA #2018-173
169 Hidden Beach

Request for an Area Variance to Section 7.9.3 to allow for an addition onto a nonconforming structure to exceed 20% (230.4s.f. allowed/ 340s.f. proposed; 29.5%). David & Suzanne Cassel, Owners/Applicants.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none.

Ms. Grentzer moved and Ms. Bertovich seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. The application is to construct a 17' x 20' ground floor master bedroom and bath addition onto rear of the home. The existing house is a nonconforming structure because the north, side-yard setback is encroached upon due to the overhang. The applicant is proposing to set the addition in so the setback requirements is met. The existing home contains 1,152s.f., 20% of this would allow for a 230.4 s.f. addition and the proposed addition equals 340s.f. or 29.5%. Mrs. Dale concluded by reviewing the decision standards the Board will be considering.

Bill Moon, Contractor/Agent on behalf of the property owners, 209 Jefferson Street, Port Clinton came forward and was sworn in. The Chair presented him with the packet of documents provided for consideration and he attested that it was as they submitted. Mr. Moon said this is pretty basic and they agree with the report given by Ms. Dale. He said he would just like to emphasize the need for the additional space. He asked that the homeowner not be made to go up and down stairs anymore with an ailing heart. Mr. Moon said that he himself is almost 80 yrs. old and he doesn't like stairs either. He said that for the Cassel's to have any future in this house, they need a first floor master. He said this sized addition is about what they need to accommodate a closet and bathroom and be able to maneuver around a bed.

The Chair asked if there were any questions from the Board. There were none.

There was no one else with standing who wished to testify.

Mr. Fetzer made a motion to close the public comment segment of the hearing, seconded by Ms. Bertovich. All were in favor and the motion carried.

Mr. Grentzer motioned to recess into executive session to deliberate the merits of the case. Mr. Fetzer seconded the motion and the roll call vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Ms. Bertovich – yes and Ms. Roberts - yes. The motion carried and the Board recessed at 7:14 pm.

Mr. Fetzer moved and Ms. Bertovich seconded the motion to reconvene. The roll call vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Ms. Bertovich – yes and Ms. Roberts - yes. The Board reconvened at 7:24 p.m.

The Chair asked Mrs. Dale to read the Findings of Fact for the Appeal request BZA Case #2018-173:

With regard to BZA-2018-173 being a request for an Area Variance to Section 7.9.3 to allow for an addition onto a nonconforming structure to exceed 20% (230.4s.f. allowed/ 340s.f. proposed; 29.5%) for the property located at 169 Hidden Beach:

1. The property in question **will** yield a reasonable return and **can be** used beneficially without the variance because the property can continue to be used as a single-family residence.
2. The variance is **not** substantial because the property is of sufficient size to accommodate the addition. Furthermore, the home encroaches only due to the overhangs on the structure; the foundation of the existing home meets the setback.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because the construction will take place at the rear of the home and will meet the setback requirements.
6. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.).

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7. The property owners stated they **did not** purchase the property with knowledge of the zoning restriction.
6. The property owner's predicament **cannot** feasibly be obviated through some method other than a variance because they are attempting to make the space handicap accessible due to health issues, causing the size of the addition to be a little larger.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance because the all other requirements of the zoning code are met and it is the minimum variance needed.

Ms. Grentzer moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (2) (3) (7) weigh more heavily to show that:

- a. Practical difficulty is sufficient to warrant granting the Variance requested.
- b. There is a preponderance of reliable, probative and substantial testimony; and
- c. There is evidence that **does support** the applicants request for a variance.

Therefore, the Variance should be accordingly **APPROVED**.

Motion Seconded by: Ms. Michael. Roll Call Vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Ms. Bertovich – yes and Ms. Roberts - yes. Vote 5-0, the motion passed.

The Chair stated the application has been approved and permits can be picked up following next month's meeting.

The Chair asked Mrs. Dale to introduce the third case of the evening.

Adjudication Hearing
Case BZA #2018-178
7185-7233 E. Harbor Road – Shady Shores

Request for a Conditional Use in accordance with Section 3.1.10.C.ii & Section 4.2 for a 29 site expansion to an existing 119 site Recreational Camp/Campground. Also requesting Area Variances to Section 4.2.2.iii to allow 4 camp sites to encroach into the south, side-yard setback (45' required/20' proposed) and Section 4.2.2.v to allow a road right-of-way to encroach into the 20' buffer, and Section 4.2.2.vi to alleviate the required open space (25%; 2.08ac. required/ 0% proposed).

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. Ms. Bertovich stated she would be abstaining from this case.

Ms. Grentzer moved and Mr. Fetzer seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the applicant to come forward.

Tom Steinbrick, Agent, 5910 E. Port Clinton Eastern Road, Marblehead came forward and was sworn in. The Chair presented him with the packet of documents provided to them for consideration and he attested that it was as he submitted.

The Chair asked him to proceed. Ms. Dale interrupted and stated that we now have 4 members present for this hearing with no Alternates available. She said that as the applicant, he has the right to ask for a continuance until next month to see if we will have full Board present. She stated that with 4 members, the hearing could go on, but should it result in a tie vote, the application will automatically be placed on the next agenda and re-heard. In order for the case to be approved or denied, a majority vote of those present would have to be had and that would be 3-1. She told Mr. Steinbrick it is his choice if he wants to move ahead with 4 members or continue this until next month with the anticipation that we will have a full Board available. Mr. Steinbrick stated he would like to continue the hearing until next month.

Ms. Dale shared for those in attendance that the hearing next month will be held on October 17, 2018 at 6:30p.m. By making that announcement, the Township is not required to re-notify and send out letters to all adjacent property owners, but common practice is that she will send out the announcement again. She also shared that there is a continuation case from August that will be held before this hearing, so this case will be second on the agenda in October.

Ms. Dale asked if there were any questions from those in attendance. A lady asked what happens if they can't make it. Ms. Dale stated that this is a hearing that requires attendance and sworn

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testimony. Ms. Dale stated that anyone whom is unable to make it has the right to send a representative on their behalf; that could be a family member, friend, neighbor or personal attorney. She explained that this Board does not accept letters ahead of the meeting because they cannot be cross-examined or asked further questions of. The Chair asked if a motion was needed. Ms. Dale stated no since the applicant requested the continuance.

Ms. Bertovich returned to the meeting.

Signing of Decision Sheets

The Chair asked if the Board had the opportunity to review the Decision Sheet presented and if there were any corrections or modifications. There being none, Ms. Grentzer motioned to approve the following decision sheets as presented. Ms. Michael seconded. Voice Vote: All in Favor. None Opposed. Motion carried.

- a. **BZA-2018-132 129 Leddy Lane.** Request for an Area Variance to Section 5.6.7 to allow for the installation of 16' of 6' high vinyl privacy fencing in the front yard where 5' high fencing is allowed. **Robert & Kathleen Lucak, Owner/ Applicant.**
- b. **BZA-2018-148 163 Lynn.** Request for an Area Variance to Section 3.1.5 to allow for a new single-family home to be built in the same general location with a 0' front yard setback (5' required) and 1' north, side-yard setback (3' required). **Don & Inga Longwell, Owner/Applicant; Travis Mayer/Agent.**

Approval of August 15, 2018 Board of Zoning Appeals Meeting Minutes

Ms. Grentzer made a motion to approve the August 15, 2018 meeting minutes, Ms. Bertovich seconded. All were in favor and the motion carried.

Old Business

There was none.

New Business

There was none.

Other Business

Ms. Grentzer announced that October 11, 2018 is candidate's night for Ottawa County. It will be held at the Elks Club at 7:00p.m.

Ms. Dale stated that it appears as though the agenda for October will be large and there may be a need to hold a special meeting. She said she would prefer to hold meetings back-to-back if everyone's schedules would allow it. She also shared that the November meeting is the night before Thanksgiving and asked the Board if anyone has travel plans so we can think about holding a special meeting in November as well if need be. Discussion ensued. Ms. Dale stated she will send out an email to everyone with potential dates for their consideration and for them to let her know their availability.

Reports and Communications from Members and Staff

There was none.

Adjournment

Mr. Fetzer moved to adjourn the meeting and Ms. Bertovich seconded the motion. All in attendance were in favor and the motion carried.

The meeting was adjourned at 7:45 pm.

Kathryn A Dale
RECORDING SECRETARY

Sherry Roberts
Joseph R. Fetzer
Cathy Burdick
S. I. Mulani

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