

RECORD OF PROCEEDINGS

Minutes of

Meeting

Danbury Township Board of Zoning Appeals

BEAR GRAPHICS 800-325-8094 FORM NO. 10148

Held

July 20, 20 22

The Danbury Township Board of Zoning Appeals Regular Meeting was called to order at 6:31 p.m. by the Chair, Loretta Grentzer. The Pledge of Allegiance was recited.

The roll call showed the following members present: Chair, Loretta Grentzer, Vice-Chair, Mr. Clyde Shetler, Members Ms. Lisa Bauer, Mr. Joseph Fetzer, Alternate, Mr. Gregory Huffman and Alternate, Ms. Patty Zsigo. Member, Ms. Sherry Roberts was excused. Also, present was Kathryn Dale, Zoning & Planning Administrator. Visitors present were, Robert & Carol Richardson, Lynne Leister, William Peate, Rich Olsen, Jonathan Brown, Jim & Cheryl Petty, and Peter Corrado.

Ms. Dale explained that the agenda was going to be altered so that Ms. Zsigo could sign minutes and decision sheets, then she would be excused. Alternate, Mr. Huffman was going to be seated for the evening for Ms. Roberts.

**Approval of June 15, 2022,
Board of Zoning Appeals Meeting Minutes**

Mr. Fetzer made a motion to approve the June 15, 2022, regular meeting minutes as presented. Mr. Huffman seconded the motion. All were in favor, motion carried.

Signing of Decision Sheets

Ms. Dale asked if the Board had the opportunity to review the Decision Sheets presented for the following cases. Mr. Huffman motioned for approval of the decision sheets as presented. Ms. Bauer seconded. All were in favor and the motion carried.

- a. **BZA-2022-131 340 Sackett.** Request for Area Variances from Section 7.12.3.A. to allow more square footage than allowed onto a nonconforming structure [20% (293.4s.f.) allowed/ 47.3% (694s.f.) proposed] and to Section 5.7.3 to allow an addition to encroach into the required front-yard setback (16.7' Avg./ 14.7' proposed). **Gregory & Jennifer Green, Owner/ Applicant; Lee Short, Architect/Agent.**
- b. **BZA-2022-137 9213 Northshore Blvd.** Request for an Area Variance from Section 5.7.2 to allow for a covered front porch addition to encroach into the south, front-yard setback (18' proposed/ 25' required). **William & Mary Smith, Owners/ Applicants.**
- c. **BZA-2022-138 2050 Sauger.** Request for an Area Variance from Section 5.7.1 to allow for a shed addition to encroach into the north, front-yard setback (23'6" proposed/ 25' required). **Robert & Carol Richardson, Owner/ Applicant.**

Ms. Dale read the rules of order for the meeting proceedings. The Chair asked Ms. 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.

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

**Adjudication Hearing
Case BZA #2022-161
2050 & 2068 Sauger
Richardson/ Demmerle**

Request for Area Variances from Section 5.12.1. B to allow for an above ground swimming pool to be located 0' from the side property line (5' required) & Section 5.2.1.C.ii to allow said pool to be less than 5' from the principal structures (1'10" from 2050 Sauger & 4'4" from 2068 Sauger).

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Mr. Shetler moved, and Ms. Bauer 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. Ms. Dale said the applicants are proposing to share an above-ground swimming pool and place it over the property line between the two homes. The pool was installed without a proper permit and now needs variances. According to Section 5.12.1.B, swimming pools are supposed to be located in the side or rear yard and be 5' from the property lines. Since the pool is proposed to be shared by both owners and sit across the property line, both properties are required to have a 0' setback where 5' is required, in order for the pool to remain. Swimming pools are also considered to be an accessory structure and as such, are required to be separated, or 5' away from the principal structure, which in this case is the single-family homes. The pool is proposed to be 4'4" from the house located at 2068 Sauger (Demmerle's home, south lot) and 1'10" from the deck of the house located at 2050 Sauger (Richardson's home, north lot). Ms. Dale concluded by reviewing the decision criteria the Board would be considering during their deliberations.

The Chair asked if the Board Members had any questions for Ms. Dale. There were none.

Robert "Bob" Richardson, Owner, 2050 Sauger, Marblehead was called upon and sworn in. Mr. Richardson reviewed the paperwork and stated it was as they had submitted. The Chair asked if

Danbury Township Board of Zoning Appeals

BEAR GRAPHICS 800-325-8094 FORM NO. 10148

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July 20, 20 22

there were any additional documents that he wished to enter into the record. Mr. Richardson indicated he did not and asked if Ms. Dale had received any correspondence from adjacent property owners. She indicated she had not. Ms. Dale noted that Mr. Demmerle could not be present this evening. Even though Mr. Demmerle is a co-applicant on this application, a "Letter of Agency" is in the file indicating that Mr. Richardson has authority to also represent Mr. Demmerle's interests in this application. The Chair invited Mr. Richardson to provide his testimony.

Mr. Richardson stated that they moved in in either 2007 or 2008, several years ago. And a few years later, Mark and his wife moved in and then filed for divorce. So, it is Mark only and his kids. We had a piece of unused land between our two properties. Maybe you can see from the photographs, the pool ended up there. But, originally for several years, there was a trampoline that Mr. Demmerle owned and put in there for not only his kids, but for our kids. After several years of use, and the kids getting a little older, it got beat up. We agreed to take it down and had a piece of land that was unused. Between discussions on both sides, we came up with the idea with putting a pool basically where the trampoline was located. It would be a very similar footprint. We had the pool built by Lighthouse in Sandusky. Today it's where it stands, and we and several neighbors have used it over the years. So, I think it is a great use, and it's really a terrific use of the land that couldn't be used for anything else. If it was a smaller pool that met the setback, the pool would have to be too small to consider. So, we decided on an eighteen-foot pool, you have our standard four-foot above ground pool. Again, both families use it a lot, as well as the neighbors and friends as well.

Ms. Bauer asked how long the pool has been there? Mr. Richardson stated that it has been there three or four years.

Ms. Grentzer asked if the applicant was aware that a permit was needed? Mr. Richardson stated not, not for a free-standing structure.

Ms. Grentzer asked how the applicant responds to the fact that you do not have a written agreement regarding maintenance, and should there be a difficulty or somebody moving, how would you maintain that? Mr. Richardson stated that he can easily get a letter from Mr. Demmerle stating that if either of us move, again it's been four years. Ms. Grentzer clarified that they would put it in a contract that if either of you moved, the other would have to maintain? Mr. Richardson stated that yes, we will easily do that. Ms. Grentzer said, you don't have one now? Mr. Richardson said no and stated that we agreed to have it built years ago, and it's been on good faith ever since. In fact, he's moving up here next year full-time after he sells his home in Strongsville. So, he'll be here full-time. He's a school teacher in Strongsville. Ms. Grentzer asked Mr. Richardson if he is full time? Mr. Richardson stated that not at this point. He retires next year.

The Chair asked if anyone else had any questions for the applicant?

Ms. Bauer stated that was their main concern was regarding what would happen if someone moved? Mr. Richardson stated that they certainly have no intention. A contract does need to be written up for protection.

The Chair asked if there were any other questions from the Board. There were none. Ms. Grentzer indicated she would call on those on the sign-in sheet to ask if they wished to speak or not regarding this application.

Richard Olsen, 2152 Sauger, Marblehead was called upon and sworn in. Mr. Olsen said, it is a great street, and we all get along and we all use the pool. I do not see any problem. If for some reason it did not work out, they could just take it out, but we all use it. It's a plus. It is a small street, and it has come a long way since - I've been on the street for thirty years. We think of it as an asset. Thank you.

Lynne Leister, 2128 Sauger, Marblehead was called upon and sworn in. Ms. Leister said, we are always invited down there, and you cannot even see it from the road. So, it is not an obstruction at all. And they have been nice enough to let us all use it. We've been there before.

Jonathan Brown, 2140 Sauger, Marblehead was called upon and sworn in. Mr. Brown said, I did not even know there was a pool there until Rich told me what was happening. So, if that tells you anything. It is very well landscaped. I have no doubt in my mind that if the pool were to remain, I know that the community and the neighborhood would make sure it was maintained or if it is needed to be taken down at some point. I do not see an issue with the whole thing at all.

Jim & Cheryl Petty were called upon and both indicated they did not wish to speak.

The Chair asked if there was anyone else present who wished to speak or if there were any other questions from the Board.

Mr. Shetler asked if the pool has been in place for years, why this is coming before them now? Ms. Dale stated that she only recently noticed it and it could be because of the landscaping. I also had a concern raised by the association president who is not here this evening. And it is to my understanding that it went before their association board and a majority voted for it to remain. So, there were some that were against it, but a majority of their board voted to allow it to remain. That is what I was told by the association president. This is how it came to our attention.

RECORD OF PROCEEDINGS

Minutes of

Meeting

Danbury Township Board of Zoning Appeals

BEAR GRAPHICS 800-325-8094 FORM NO. 10148

Held

July 20, 20 22

The Chair asked if there were any other questions from the Board. There were none. The Chair asked if the applicants had any rebuttals to the testimony provided by the neighbors or if there were any other questions from the Board. There were none.

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

Mr. Huffman motioned to recess into executive session to deliberate the merits of the case. Mr. Shetler seconded the motion, and the roll call vote was as follows: Mr. Huffman – yes; Mr. Fetzer – yes, Ms. Bauer – yes; Mr. Shetler – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 6:55p.m.

Ms. Bauer moved, and Mr. Shetler seconded the motion to reconvene. The roll call vote was as follows: Mr. Huffman – yes; Mr. Fetzer – yes Ms. Bauer – yes; Mr. Shetler – yes; Ms. Grentzer – yes. The Board reconvened at 7:17 p.m.

The Chair asked Ms. Dale to read the Findings of Fact for BZA Case #2022-161:

With regard to BZA-2022-161 a request for Area Variances from Section 5.12.1.B to allow for an above ground swimming pool to be located 0' from the side property line (5' required) & Section 5.2.1.C.ii to allow said pool to be less than 5' from the principal structures (1'10" from 2050 Sauger & 4'4" from 2068 Sauger) for the properties located at 2050 and 2068 Sauger:

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 for a single-family residence with or without the pool or accessory structures.
2. The request **is not** substantial because both owners have agreed to this arrangement, and it does not directly impact any other property in the development.
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 for the same reasons aforementioned and it is well screened with landscaping from view of any other property or the street.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because all utilities are available to the property and existing.
5. The property owner states they **were not** aware of the zoning restrictions at the time they purchased the property.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by removing the pool and placing it on 2050 Sauger, who has more room for said pool on their lot.
7. The spirit and intent behind the zoning requirement **would be** observed and substantial justice done by granting the variance because there is no impact on adjoining properties.

Mr. Shetler 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 WITH THE FOLLOWING CONDITIONS:**

- 1.) That, the owners enter into an agreement regarding the maintenance and future removal of the pool. Said agreement shall be recorded at the Ottawa County Recorder's Office and be in perpetuity to the next owners of their respective properties.
- 2.) That, said agreement is completed and recorded prior to the zoning permit being issued.
- 3.) That, said agreement shall be completed and recorded within one (1) year from the date of approval of this Variance or the pool shall be removed.

Motion Seconded by Mr. Fetzer. Roll Call Vote was as follows Mr. Huffman – yes; Mr. Fetzer – yes Ms. Bauer – yes; Mr. Shetler – yes; Ms. Grentzer – yes. Vote 5-0 the motion passed. The Chair stated that the application has been approved and the applicant can pick up permits following the Board's next meeting which is August 17, 2022.

Danbury Township Board of Zoning Appeals

BEAR GRAPHICS 800-325-8094 FORM NO 10148

Held

July 20, 20 22

**Adjudication Hearing
Case BZA #2022-163
2128 Sauger
Leister/ Peate**

Request for an Area Variance from Section 3.5 to allow for a deck to encroach into the west, rear-yard setback (16' proposed/ 25' required).

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Mr. Shetler moved, and Mr. Huffman 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. Ms. Dale stated that the applicant took out a zoning permit (#2021-259) in 2021 for a new SF home which included a 12' x 28' deck on the rear of the home and complied with the required setbacks. The owner has room to add 3' more onto the 12' x 28' deck they were already planning for. The applicant would now like to add an additional 12' x 12' section of decking. The additional deck space will encroach into the rear-yard setback and be 16' from the rear property line where 25' is required. Ms. Dale concluded by reviewing the decision criteria the Board would be considering during their deliberations.

The Chair asked if the Board Members had any questions for Ms. Dale. There were none.

Lynne Leister, Owner of 2128 Sauger, Marblehead was called upon and sworn in. Ms. Leister reviewed the paperwork and stated it was as they had submitted. The Chair asked if there were any additional documents that she wished to enter into the record. There was none. The Chair invited Ms. Leister to provide her testimony.

Ms. Leister said, that as you know the Sauger Drive is very busy this year. My parents bought that first lot. It was the first mobile home on there in 1986. And as you can see from the "C", "D", & "E" - we took over the payments and moved in 2010. Now we are building there, and we are going to be moving up here permanently. As you can see on C, D, E, and F, my parents had the deck all the way out to the boardwalk, where the dock is. We kept hearing, "oh, you are grandfathered in", and we weren't planning on building it out that far anyway. But then to find out with a new structure, it is different. But anyway, we would just like to be able to keep our view of the Bay. We do not really want to move further back than most of the other decks on our side. I have three neighbors here that will swear for us also, we are deck people; we sit on the deck all the time.

The Chair asked if there were any other questions from the Board.

Ms. Bauer asked the applicant to clarify which was her new structure on photograph "G" and if it was the blue structure? The applicant indicated that it was and that hers is the one way back. Our house couldn't come up as far as that, so that put our deck a little further back. Ms. Bauer stated that she sees what the applicant is saying and stated that it visually looks like the deck next to you in these two pictures, it is out close to the dock. Ms. Leister stated that is correct and that we are not even going out that far.

Ms. Grentzer asked if the applicant can see the Bay from inside the house? Ms. Leister stated that they cannot see the Bay from inside the house. She stated that they are on a canal, and everybody is back.

Mr. Fetzter asked what picture "J" represents? Ms. Leister stated that is the view of the other side of the canal from Walleye. It shows how far they are decks come out to the boardwalk, so ours is not even going to be that far. So, I am just showing you that on the other side too that their decks are also out to the boardwalk.

Ms. Grentzer indicated she would call on those on the sign-in sheet to ask if they wished to speak or not regarding this application.

Richard Olsen, 2152 Sauger, Marblehead was called upon and sworn in. Mr. Olsen said, I was in a similar situation. I had a mobile home on a lot in 2007. The deck went all the way out. I took the mobile home, and I went to build a deck and I could not because it had to be so far in. I got a variance, the same as what she is asking for. She is just asking to go out as far as the other decks on our side are, not past them. She does not want to be beyond it. I personally do not see any problem with it, I did it.

Robert Richardson, 2050 Sauger, Marblehead was called upon and sworn in. Mr. Richardson said, I have known the couple back here since 2007. They're fantastic neighbors. I'm all the way up next to Bayshore, so I won't see it. But they have been great neighbors and do use the deck quite a bit in the summer. I think this small extension towards the canal will benefit them and I am sure it will be beautiful, better than the old one and I fully support their request.

Carol Richardson did not wish to speak.

Jonathan Brown, 2140 Sauger, Marblehead was called upon and sworn in. Mr. Brown said that he is the neighbor directly next to the Leister's. Currently where their deck that is approved by you right now is almost level with our house. So, the way the deck is right now they would have no view of Sandusky Bay. This proposal would extend it out to be more similar to our deck. And it would not only give them that view of Sandusky Bay, but it would also be at a similar extension with the rest of

RECORD OF PROCEEDINGS

Minutes of

Meeting

Danbury Township Board of Zoning Appeals

BEAR GRAPHICS 800-325-8094 FORM NO. 1014B

Held July 20, 2022

the decks on the canal and be more aesthetically pleasing. And I do attest as well that they are on their deck all the time and it would be heavily used and that is why they are asking for this.

Jim & Cheryl Petty were called upon and both indicated they did not wish to speak.

The Chair asked if there was anyone else present who wished to speak or if there were any other questions from the Board.

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

Mr. Shetler motioned to recess into executive session to deliberate the merits of the case. Mr. Huffman seconded the motion, and the roll call vote was as follows: Mr. Huffman – yes; Mr. Fetzer – yes Ms. Bauer – yes; Mr. Shetler – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 7:34p.m.

Mr. Fetzer moved, and Ms. Bauer seconded the motion to reconvene. The roll call vote was as follows: Mr. Huffman – yes; Mr. Fetzer – yes Ms. Bauer – yes; Mr. Shetler – yes; Ms. Grentzer – yes. The Board reconvened at 7:46p.m.

The Chair asked Ms. Dale to read the Findings of Fact for BZA Case #2022-163:

With regard to BZA-2022-163 a request for an Area Variance from Section 3.5 to allow for a deck to encroach into the west, rear-yard setback (16' proposed/ 25' required) for the property located at 2128 Sauger:

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 for a single-family residence and is permitted to have a deck.
2. The request is **not** substantial because there was a deck on the old property that was 3-5' from the channel and closer than the deck that is now being proposed.
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 there are multiple other decks in the neighborhood that are 16' or closer to the channel.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage, etc.) because all utilities are available to the property and existing.
5. The property owner states they **were not** aware of the zoning restrictions at the time they purchased the property.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by extending their current deck another 3' and/or installing a patio.
7. The spirit and intent behind the zoning requirement **would be** observed and substantial justice done by granting the variance because there is no known negative impact on adjoining properties.

Mr. Shetler 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 Mr. Huffman. Roll Call Vote was as follows: Mr. Huffman – yes; Mr. Fetzer – yes Ms. Bauer – yes; Mr. Shetler – yes; Ms. Grentzer – yes. Vote 5-0 the motion passed.

The Chair stated that the application has been approved and the applicant can pick up permits following the Board's next meeting which is August 17, 2022.

Unfinished Business

There was none.

New Business

There was none.

Danbury Township Board of Zoning Appeals

BEAR GRAPHICS B00-325-8094 FORM NO. 10148

Held July 20, 20 22

Other Business

There was none.

Reports and Communications from Members and Staff

There was none.

Adjournment

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

The meeting was adjourned at 7:52p.m.

Kathryn A Dale
RECORDING SECRETARY

Luella Kayfer
Clyde Shetter
Joseph R. Fetzer
Greg Huffman

BOARD OF ZONING APPEALS