

RECORD OF PROCEEDINGS

Minutes of

Meeting

Danbury Township Board of Zoning Appeals

GOVERNMENT FORMS & SUPPLIES 844-224-3338 FORM NO. 10148

Held

January 17, 2024

The Danbury Township Board of Zoning Appeals Meeting was called to order at 6:00p.m. by the Vice-Chair, Sherry Roberts at the Township Hall. The Pledge of Allegiance was recited.

The roll call showed the following members present: Vice-Chair, Ms. Sherry Roberts, Secretary, Mr. Greg Huffman, Member, Joseph Fetzer, Ms. Loretta Grenzer, Alternate, Mr. Joseph Kruse (late) and Alternate, Ms. Julie Cottingham. Chair, Clyde Shetler was excused. Ms. Kathryn Dale, Zoning & Planning Administrator, was also present. Visitors present included Tim Lubbe, Jeremy Parish, Scott Kerik, Rob & Karin Shindel and Peter Corrado.

Ms. Dale read the rules of order for the meeting proceedings. The Vice-Chair asked Ms. Dale if all the documents relating to the cases had been received and were in proper order. She indicated that they were. The Vice-Chair swore in Ms. Dale.

The Vice-Chair asked Ms. Dale to introduce the first case of the evening.

Adjudication Hearing  
Case BZA #2024-001  
2301 Split Rock  
Lubbe/Lenz

**Request for an Area Variance to Section 3.5 to allow for a new house to be constructed and encroach into the front, side & rear setbacks (35' west, front required/ 33.14' proposed; 10' south, side required/ 9' proposed; 35' east, rear required/ 34' proposed).**

The Vice-Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There was none. Mr. Huffman moved, and Mr. Fetzer seconded the motion to open the public hearing. All were in favor and the motion carried.

The property is Lot 1 of Dempsy Subdivision, platted in 1993, and is essentially an irregular, corner lot with technically two front yards per the zoning code definitions and one side yard. For ease of explanation, the east setback along Bayshore Road will be referred to as the "Rear Yard Setback" even though by definition it is technically a "Front Yard" due to the frontage along a roadway. The applicant is proposing a new single-family home on the property that will encroach into all of the setback requirements. Setbacks are measured to the closest point of the structure, which is considered to be the roof overhang. The proposed new single-family structure will be 33.14' from the west, front property line where 35' is required, 9' from the south, side property line where 10' is required and 34' from the east, front/rear property line where 35' is required. Ms. Dale indicated that the applicant can discuss more in their presentation, but she is under the impression from them, that they will be withdrawing the request for a variance from the south, side-yard setback and plan to shorten the garage up by 6" to meet the 10' requirement. Ms. Dale concluded by reviewing the decision criteria the Board would be considering during their deliberations.

The Vice-Chair asked if the Board Members had any questions. Ms. Grenzter clarified that initially we were looking at 3 variances and now we will only be considering 2. Ms. Dale said the applicant can verify that when it's their time to speak, but that is what she believes. She said they actually had planned on a 6" overhang on the south side of the house instead of 1', so that would have put them at 9'6" from that property line where 10' was required and they plan to reduce the size of the garage by 6" so that the 10' requirement can be met.

The Vice-Chair asked the applicant to come forward.

**Tim Lubbe**, Owner, 2301 Split Rock, Marblehead, Ohio, was called upon and sworn in. Mr. Lubbe reviewed the paperwork and stated it was as they had submitted. The Vice-Chair asked if there were any additional documents that he wished to enter into the record. There was none.

**Jeremy Parish, Agent**, Wayne Homes, 6489 S. Dixie Hwy., Cygnet Ohio, was called upon and sworn in.

The Vice-Chair asked them to proceed with their testimony.

**Mr. Lubbe** said, thank you, as Ms. Dale relayed, we are here tonight seeking the Board's consideration of a variance. We certainly knew at the time, when we purchased the property, that there were restrictions. I would only say that we did not realize how large the setbacks were and that being between two roads would result in 35' from each. We had actually designed the house with Wayne Homes before we bought the property. We spent a number of months trying to find a location. This met the criteria of a central location because I work in Toledo and my wife works in Elyria. This will be a nice place for both of us to commute long distances, but nonetheless, that's what gave rise to this. So, we came in, we bought the property and I started to discover things that I had no idea about, one being where the real offsets were and how big they were because when we bought the property, we thought "Oh, our one-story house is easily going to fit here" – but not so much. A square does not fit well in a triangular lot. Ultimately, we did minimize the house from where it was as we were learning these things. We engaged the surveyor and Mr. Parish can give you more of the details. Mr. Lubbe looked to Mr. Parish and asked what the surveyor told them.



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Mr. Parish said the surveyor came back and said, you’re going to have to make revisions because the house, as originally designed, did not fit. Okay, fine and he showed us what would work, and we got together with the homeowner. I think we went through two or three change orders to change the floorplan and then it finally came down to the little, tiny triangle of the front porch sticking into the west, front yard setback along Split Rock. So, at that point, I explained to the property owner that Wayne Homes does not do surveys, and we had already put in their purchase agreement. So, I reached out to Ms. Dale and asked for some general advice about the porch corner and what a variance might look like for the homeowner because they are very busy and that was something I was happy to do and help them with. Ms. Dale asked me if what was shown on the survey was going by the overhangs or the foundation. After the air came back into the room, I said, well, I’m pretty sure it’s the foundation, but let me reach out to the surveyor. When I reached out to the surveyor I asked, by chance when you did this, did you check into the requirements, and he said no and that what was shown on the survey was the foundation plan of the house. That then led to the difficult call we had to make to the homeowner, not the surveyor, and we shared with them what our options were at that point. We either needed to significantly change the house plans again or we needed to ask for variances.

Mr. Lubbe said in the interim they reached out to the HOA because they have their own set of restrictions as well, which for the most part follows Danbury’s zoning. So, if you were magnanimous enough to grant us, we would still have to resolve things with the HOA. We shared with Scott Kerik, the HOA President our plans and issues. And tonight, I just met our neighbors to the south for the first time also. So, the HOA has said, we agree to in principle everything you have asked for but we would suggest that you don’t encroach into the south, side-yard setback. There is a single, vacant lot to our south side. The HOA basically said, even though it’s just the roof overhang encroaching on that side, we (HOA) don’t want to create a situation where you (us/we) are even closer to that property. After a lot of discussion, we said okay, and we are withdrawing our request tonight for a variance from that south, side property line. We will reduce our garage by 6”. But we are still asking for the other two, main variances from the east and west. I’m happy to answer any questions you may have.

Mr. Parish added that the overhang on the rear of the house, to the east, along Bayshore, will actually be 6” as well, so it will not encroach by a foot as advertised. Ms. Dale clarified that they will then be a 34’6” instead. Mr. Parish said that was correct.

The Vice-Chair asked if the Board Members had any questions. There were none.  
The Vice-Chair asked if there was anyone with standing present who wanted to testify.

Rob Shindel, 2337 Split Rock, Marblehead, Ohio was called upon and sworn-in. Mrs. Shindel indicated that she would not be speaking. The Vice-Chair asked Mr. Shindel to proceed with his testimony. Mr. Shindel said they received their postcard notification in the mail because we own the lot to the south at 2337 Split Rock. He stated they purchased the lot 2 years ago. Mr. Shindel said their main question has to do with the wooded area that straddles both properties. We saw that they are coming very close to the property line with the construction, so our assumption is that they are going to be excavating that wooded area also. We just wanted to voice that wherever that property line is, I don’t think there are very many trees left on our side, but there could be that one of the trees is left, but the root system because of the excavation is damaged – we just don’t want to have a tree left that’s close to the property line in a state that its going to cause problems down the road, like falling in a windstorm or something like that. We didn’t know if this was the correct forum to bring up something like this. We thought they were going to be asking for 1’ but now they aren’t even asking for that. We have not had a survey done of our property, but we’ve been shown approximately where the property line is. Again, I don’t think there are very many trees on our side, but if they (the trees) are close to the property line, that’s what we are concerned about and that the roots will get damaged. We would just ask that if the root systems do get damaged, that the trees just be removed.

Ms. Roberts asked for clarification. The trees that you think might be on your property, do you want them to stay or go? Mr. Shindel said, they’re nice – there are 3 oaks that are quite large. It would be nice to have them stay, but I’m not here to say they have to stay. I don’t want them to stay if they are left in a condition where they’re unstable or the root system is damaged to a point where they are going to die eventually. So, I would prefer at that point they would be taken out if that’s going to be the case. Ms. Roberts asked, if they are on your property, are you looking to take them out yourself or are you hoping that he’ll go onto your property and take them out? Mr. Shindel said, we live in Toledo and we actually had to have an oak tree taken off our property this past spring. It was a couple of thousands of dollars. We also have this property here in Marblehead. In the fall we had to remove some of the arborvitae on the south side of our lot. So at the moment, financially we can’t take out any more trees.

Ms. Roberts asked the applicant to come back forward to address this. Mr. Lubbe said he just got a chance to meet and talk to Mr. Shindel prior to the start of the meeting. It’s funny he mentioned this because I mentioned to him that when we got the survey results and found out where the property line is, there are maybe 6-inches of trees and brush on their side of the property line. I volunteered –



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it's his property and if he wants to keep them, we'll leave it alone, but if you want us to cut them down, we will since we have to cut most of them down anyway. I'm happy to take them out.

Ms. Dale asked Mr. Lubbe if he plans to clear the whole property. Mr. Lubbe said there is only one tree – well there are two trees towards the front that are nice oaks and then there is one kind of in the middle of the lot that has to go because of the house. The one tree we are going to keep, it's a good oak. The second one, I would keep it, but according to the "tree guy" there are some issues with the health of it and the crotch of the tree. So, one out of three will be saved. Ms. Dale said, then to clarify Mr. Shindel's point, the tree that is going to be saved, will be marked and is it or is it not going to be affected by excavation? Mr. Lubbe said they will be marking the tree to remain. I would love to save all of them and have it as a nice buffer between the two lots, but the house won't fit unless we take down the trees. Mr. Shindel asked, the one tree remaining is entirely on your property. Mr. Lubbe said yes, that it is – if you know where the sewer system is, it's close to that, along Split Rock Drive.

There were no further questions from the Board.

Scott Kerik, 2424 Split Rock Road, Marblehead came forward and was sworn in. Mr. Kerik stated that he was the President of the Dempsey's Landing Homeowners Association and had a letter to enter into the record of the HOA's position. Ms. Dale stated that the letter would be entered into the record as HOA Ex. 1. Mr. Kerik explained their subdivision has a review board, and architectural review board that reviews plans. Mr. Lubbe's plans were reviewed, and our board didn't have any issues with the house design, but they did have an issue with the setback requirements. Without reading the whole letter, the highlights are that the HOA supports the rear setback encroachment of 12" or less. They did not support the south, side-yard setback encroachment, which they have stated they are shrinking the house or garage to meet, and the HOA did support the front encroachment, which is all along the triangle area.

There were no questions from the Board and there was no one else with standing present to testify.

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

Ms. Cottingham 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: Ms. Cottingham– yes; Ms. Grentzer – yes; Mr. Fetzer – yes; Mr. Huffman – yes; Ms. Roberts – yes. The motion carried and the Board recessed at 6:25p.m.

Mr. Fetzer moved, and Ms. Cottingham seconded the motion to reconvene. The roll call vote was as follows: Ms. Cottingham – yes; Ms. Grentzer – yes; Mr. Fetzer – yes; Mr. Huffman – yes; Ms. Roberts – yes. The Board reconvened at 6:39p.m.

The Chair asked Ms. Dale to read the Findings of Fact for BZA Case #2024-001:

**With regard to BZA-2024-001 being a request for Area Variance to Section 3.5 to allow for a new house to be constructed and encroach into the front & rear setbacks (35' west, front required/ 33.14' proposed; 35' east, rear required/ 34.5' proposed) for the property located at 2301 Split Rock:**

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property can be used for a single-family residence and the zoning resolution is not denying the owner reasonable use of the property.
2. The request **is not** substantial due to the triangular shape of the building envelope.
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 building will be residential in character in a residential neighborhood.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because utilities are existing, and any utility extensions or upgrades will require approval from the appropriate County agencies.
5. The applicant states they were aware of the zoning restrictions at the time they purchased the property in August 2023, but did not realize the setbacks were measured to the roof overhang.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance since this is new construction and they could build a structure that meets the setback requirements.



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- 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.
- 8. Other relevant factors include that the applicant has indicated they are eliminating the need for the south, side-yard setback encroachment by reducing the garage by 6”.

Ms. Cottingham 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. Fetzer. Roll Call Vote was as follows: Ms. Cottingham – yes; Ms. Grentzer – yes; Mr. Fetzer – yes; Mr. Huffman – yes; Ms. Roberts – 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 February 21, 2024.

Approval of Board of Zoning Appeals  
December 20, 2023, Regular Meeting Minutes

Mr. Huffman made a motion to approve the December 20, 2023, regular meeting minutes as presented. Ms. Grentzer seconded the motion. All were in favor, motion carried.

Signing of Decision Sheets

The Vice-Chair asked if the Board had the opportunity to review the Decision Sheets presented for the following cases. Mr. Fetzer motioned for approval of the decision sheets as presented. Mr. Huffman seconded. All were in favor and the motion carried.

- a. **BZA-2023-287 272 Perryview.** Request for an Area Variance from Section 5.5.7 to allow for 120' of 5' high fencing to be replaced with 6' high fencing in the front yard, where 5' is the maximum height permitted. **Patrick & Renee Rancour, Owners/ Applicant.**
- b. **BZA-2023-289 2389 Knobhill.** Request for an Area Variance from Sec. 5.2.1.A.i.b to allow more cumulative accessory building square footage than permitted (1,728s.f. proposed/1,200s.f. allowed). **Gregory Huffman & Cindy Brundage, Owners/Applicants.**
- c. **BZA-2023-291 0 S. Bridge (PIN# 0140467606665051).** Request for a Conditional Use in accordance with Section 3.4 and Section 4.15 for 16 cabins and 67 campsite Recreational Camp/Campground. Also requesting Area Variances from Section 4.15.2.C to allow 10 cabin sites and 10 campsites to encroach into the required 45’ south, side-yard setback and 60’ east, rear-yard setback and Section 4.15.2.F to reduce the amount of open space (2.5ac. required/ 2 ac. provided). **Samuel Downing, Agent; Steven Isenberg, Owner/Applicant.**

Unfinished Business

There was none.

New Business

There was none.

Other Business

Mr. Huffman stated he would not be present at the February meeting because he will be in Hawaii. Mr. Fetzer asked if the 6:00p.m. meeting time is difficult for Mr. Kruse because of his work commute. If it is, we could start later. Ms. Dale said she would ask him.

Reports and Communications from Members and Staff

Ms. Dale distributed the zoning department annual report and an updated zoning map for the Board Member’s zoning codes.

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Adjournment

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

The meeting was adjourned at 6:47p.m.

Kathryn A Dale  
RECORDING SECRETARY

Sherry Roberts  
Sherry Roberts  
Greg Huffman  
Greg Huffman  
Joseph R. Fetzer  
Joseph Fetzer  
Loretta Grentzer  
Loretta Grentzer  
Julie Cottingham  
Julie Cottingham  
BOARD OF ZONING APPEALS

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