

COLERAIN TOWNSHIP BOARD OF ZONING APPEALS

Regular Meeting Minutes

4200 Springdale Road - Cincinnati, Ohio 45251

Wednesday, June 28, 2017 – 6:30 p.m.

Meeting called to order: 6:30 p.m.

Pledge of Allegiance was led by Mr. Reininger.

The Explanation of Procedures was presented by Mr. Reininger.

Roll Call: Mr. Bartolt – aye, Ms. Wilson – absent, Mr. Price – aye, Mr. Reininger – aye, Mr. Roberto - absent.

Alternate Mr. Hill was seated to fill in for absent members.

Also present were staff Jenna LeCount and Marty Kohler.

Swearing in: Mr. Reininger swore in the appellants, attorneys and all speakers in the cases.

Hearing of Appeals:

Case No. BZA2017-07 – Section 10.2.3(B) – restricts the height of residential accessory buildings to 15 feet. Section 12.2.1(B)(3) – specifies that the height of a building with a gable roof is measured at the mean height of the eaves and ridge of the roof.

Location: 8669 Wuest Road

Applicant/Owner: Bryan and Angela Kist

Ms. LeCount noted that this case was tabled at the previous meeting for continuation at the June meeting. The property owner has requested additional time to prepare plans and has requested a continuance to the July 26, 2017 meeting. A motion was made by Mr. Hill and seconded by Mr. Price to continue review of the case to the July 26, 2017 meeting.

Roll Call: Mr. Hill – aye, Mr. Price – aye, Mr. Reininger – aye, Mr. Bartolt - aye.

Case No. BZA2017-08 - Section 12.8.1 – restricts the location of a 6 foot high privacy fence to the rear yard and up to 25 percent of the side wall length in the side yard.

Location: 7121 Pippin Road

Applicant/Owner: Amanda Caldwell, Ideal Due Diligence / Jordan and Tasha Clenney

Ms. LeCount noted that this application is continued from the May 24 meeting. She showed illustrations of the property where privacy fences are permitted versus the location of the proposed fence. Staff's recommendation was for denial of the proposed variance. The applicant has supplied additional information regarding the claim of hardship created by existing large trees on the property. Ms. LeCount showed the revised plan along with photos of the property from various angles. Staff findings are as follows:

1. The setback variance requested is substantial since the zoning resolution prohibits privacy fences in the front yard of principal buildings.
2. The granting of the variance would grant a consideration that is not available to other property owners in the neighborhood.
3. The property in question would likely yield a reasonable return without the variance.
4. The granting of the variance would probably not have a negative impact on neighboring property but would create a precedent to allow for privacy fences in front yards if requested by similar properties.
5. Approval of the fence variances would not affect the delivery of government services.
6. There are no unusual topographic or site configuration issues related to this property which would prevent the reasonable application of the front yard regulations.
7. By taking into consideration the benefit to the applicant if the variance is granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would not be done by granting the variance for a front yard privacy fence.

Staff Recommendation is for denial of the variance request.

Amanda Caldwell who is a consultant representing the property owners, having been sworn, said that she has updated the plans to show the location of trees and a sidewalk behind the garage. The owner received a quote for removal of the rock wall and trees to accommodate the fence at \$1,800. The purpose of the six foot is to contain the owner's large dog and to provide for security for the family. The owner has a truck for his business that needs to be secured inside of the fence.

Tasha Clenny, having been sworn, thanked the Board for the extra time to prepare their case. She provided the Board with aerial photos, site photos and drawings. The drawings showed the difference between the allowed fence location and the proposed location. The fence would provide for safety for their children, eliminate the number of trespassers on the property, and provide for protection for items stored outside behind the garage. The work van has been broken into and the fence would allow for additional security. The variance would allow for the protection of large trees on the property.

With no further public comments, a motion was made by Mr. Hill and seconded by Mr. Bartolt to close the public hearing.

Roll Call: Mr. Hill – aye, Mr. Price – aye, Mr. Reininger – aye, Mr. Bartolt - aye.

Mr. Bartolt asked about the distance between the path and the garage. Ms. Clenney said about two to three feet. Mr. Bartolt asked if the fence could be parallel with the sidewalk. Ms. Clenney said that it would not enclose enough of the rear yard.

Mr. Reininger said that he understands the applicant's need for the variance. He asked about the additional area that would be enclosed by the fence. Ms. Clenney said that they have a great yard but would like to have it enclosed so that they can use it. They want an area for a play set and be able to enclose the work van.

With no further discussion a motion was made by Mr. Price and seconded by Mr. Bartolt to approve the variance as requested.

Roll Call: Mr. Hill – aye, Mr. Price – aye, Mr. Reininger – aye, Mr. Bartolt - aye.

Case No.: BZA2017-11 - Variance request from Section 10.2.1(A)(4) which requires that accessory buildings be located on the same lot as the principal use which it serves; Section 10.2.1(A)(8) which requires that no accessory building occupy more of the lot area than the footprint of the principal building; Section 10.2.3(B) which restricts the height of residential accessory buildings to 15 feet; Section 12.2.1(B)(3) which specifies that the height of a building with a gable roof is measured at the mean height of the eaves and ridge of the roof.

Location: 11873 Stone Mill Road

Applicant/Owner: Dale and Sheri Lutz

Ms. LeCount summarized that this is a request for an accessory building that is larger and taller than allowed and on a separate parcel from the existing residential structure which is not allowed. The property is near Kemper Rd. at the north end of the Township on a wooded site containing more than 10 acres. The house is about 660 feet from Stone Mill Rd. Ms. LeCount showed aerial photos and ground level photos of the property. The proposal is to demolish the current accessory building and replace it with a building measuring 64 feet by 54 feet which exceeds the footprint of the existing house by about 1200 square feet. The height exceeds the maximum allowance by 4 feet. The reason for the variance is to store recreational vehicles. Staff presented the Board with copies of a letter from an adjacent property owner, Fred Wickman, which was received after the Board packets were delivered. There is also an additional accessory structure on the property which is to remain. The proposed building would not be visible from Stone Mill Road. Staff findings are as follows:

1. The property in question would likely yield a reasonable return without the variance. The property can reasonably be used as a single family dwelling within the limits of the zoning regulations.
2. The size and height variances requested are substantial since the proposed building exceeds the maximum height by about twenty seven percent and exceeds the maximum area by fifty four percent.
3. The granting of the variances would grant a consideration that is not available to other property owners in the neighborhood.
4. The granting of the variance would probably not have a negative impact on neighboring property but would create a precedent to allow for large and tall accessory buildings if requested by neighboring properties.
5. Approval of the height and size variances would not affect the delivery of government services.
6. There are no unusual topographic or site configuration issues related to this property which would prevent the reasonable application of the height regulations. The applicant has expressed willingness to combine the two lots.
7. By taking into consideration the benefit to the applicant if the variance is granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by not granting the variances for lot location, additional size, and additional height for the accessory garage building.

Staff Recommendation is for denial of all three variance requests.

With no questions for staff, Mr. Reininger opened the public hearing. Dale Lutz, having been sworn, said that they purchased the property as a farm but lost the status since they do not have livestock. There are other barns in the area much larger than the one being proposed that are being used for businesses. This would not be a business and would look better than having things stored outside. Only one neighbor would see it and they are supporting the variances. They have over 12 acres with trees.

Sheri Lutz, having been sworn, said that the existing barn is in very poor condition and needs to be replaced. They have a pickup truck, boat, tractor and woodworking equipment that they need to store inside.

With no further people to speak in favor or against the request, a motion was made by Mr. Hill and seconded by Mr. Bartolt to close the public hearing.

Roll Call: Mr. Hill – aye, Mr. Price – aye, Mr. Reininger – aye, Mr. Bartolt - aye.

Mr. Price asked about the letter from the applicant stating that they back onto 50 acres of woods and pasture. He wanted to know if the adjacent property could be developed for new homes and that they would see the proposed barn. Ms. LeCount said that the variance is permanent for the property.

Mr. Bartolt commented that the zoning regulations are written for dense neighborhoods and for other less dense areas. He asked if the Board could request that the parcels be combined to avoid

that aspect of the variance request. Ms. LeCount said that the variance could be denied for the building to be on a separate parcel and the owner could address the issue by combining the parcels.

Mr. Price asked if the owner would consider an agricultural use that would exempt the accessory building from zoning requirements. The property owner said that they would not consider this.

Mr. Hill asked about the other larger structures referred to by the applicant if they are legal non-conforming. Ms. LeCount said that she has no information regarding these structures. Mr. Hill asked the applicant if he had any intention of building another house on the adjacent parcel or if they would consider combining the two lots. Mr. Lutz said that they purchased it as two lots but they would not sell the other lot because the only place to put a house would be in their back yard.

Mr. Reininger noted that the primary use of the property is for residential and that the proposed structure is not subordinate to the primary use. The need for the variance cannot be self-created.

Mr. Hill asked the applicant if they would be willing to revise the proposal to meet the zoning requirements. Mr. Lutz said that they would need to go with a flat roof that would not be very attractive. They need the size to store all of their vehicles and equipment.

With no further discussion a motion was made by Mr. Bartolt to approve the variance request for the additional height and size of the building and to deny the variance request for the location on a separate parcel. The motion was seconded by Mr. Price. Mr. Reininger said that he is concerned about the height and size of the proposed building. Mr. Bartolt said that he would agree if this were in a dense area, but this is more secluded. Mr. Hill said that the Board has denied other similar requests. He is concerned about the difference between this case and other cases. Mr. Price asked if the applicant could do two separate buildings. Ms. LeCount said that the combined total of the two buildings cannot exceed the size of the footprint of the house.

Roll Call: Mr. Hill – nay, Mr. Price – aye, Mr. Reininger – nay, Mr. Bartolt - aye.

The motion failed to pass. There was some discussion regarding the continuance of the case if the applicant submitted revised plans that were closer to meeting the zoning requirements. There was also discussion that an additional board member could result in a different outcome. After discussion a motion was made by Mr. Hill and seconded by Mr. Price to continue the case to the July meeting if revised plans are received by July 14.

Roll Call: Mr. Hill – aye, Mr. Price – aye, Mr. Reininger – aye, Mr. Bartolt - aye.

Case No.: BZA2017-12 – Variance request from Section 10.2.3(B) which restricts the height of residential accessory buildings to 15 feet; and Section 12.2.1(B)(3) which specifies that the height of a building with a gable roof is measured at the mean height of the eaves and ridge of the roof.

Location: 5030 Hanley Road

Applicant/Owner: Chris Otte, Legacy Builders / Owners Patrick and Pam Dollard

Ms. LeCount showed the location of the property on a map and indicated the proposed location of the accessory building on site photos. The building would be partially screened from the road and would be accessed by a separate driveway. The driveway has a difficult slope and angle for access. The proposed building is two floors in height and is partially below grade. The height measurement is from the lowest grade to the mid-point of the roof slope. The height is 23.5 feet and 15 feet is the maximum allowed. The photos indicated the proposed location of the building with stakes. Staff findings are as follows:

1. The property in question would likely yield a reasonable return without the variance. The property can reasonably be used as a single family dwelling within the limits of the zoning regulations.
2. The height variances requested are substantial since the proposed building exceeds the maximum height by about 57%.
3. The granting of the variances would grant a consideration that is not available to other property owners in the neighborhood.
4. The granting of the variance would probably have a negative impact on neighboring property due to proximity to the house to the rear, and would create a precedent to allow for tall accessory buildings if requested by neighboring properties or on similar slope conditions.
5. Approval of the height variance would not affect the delivery of government services.
6. There are topographic issues related to this property which would constrain the reasonable application of the height regulations without additional expenses.
7. By taking into consideration the benefit to the applicant if the variance is granted, as weighed against the potential detriment to the health, safety and welfare of the neighborhood and broader community, staff finds that substantial justice would be done by not granting the variance for additional height for the accessory garage building.

Staff Recommendation is for denial of the variance request.

Chris Otte, having been sworn, said that he is the builder for the project. He noted that the owners have explored numerous options for the garage. They wanted to blend the design with the existing house using the same brick, window style, roof pitch and scale. The building would be lower than the existing house. To meet zoning requirements it would result in a redesign with a single floor but the roof on the high end of the slope would allow for easy access to the roof by kids or animals. Mr. Otte submitted drawings of the alternate scenarios. It would be very difficult to change the topography of the site. A second drawing looked at attaching the building to the main house but the construction would require that the foundation of the existing house be undercut which could put the house at risk. It would also require the elimination of windows on the house. Mr. Otte believes that the design is in keeping with the intent of the zoning code since it is constructed in the hillside with a similar architecture to the house and respectful to the surroundings.

With no further people to speak in favor or against the proposal, a motion was made by Mr. Bartolt and seconded by Mr. Hill to close the public hearing.

Roll Call: Mr. Hill – aye, Mr. Price – aye, Mr. Bartolt – aye, Mr. Reininger – aye.

Mr. Bartolt asked about the pitch of the roof of the existing house. Mr. Otte said that it is an 8/12 pitch. Mr. Bartolt asked if the roof pitch were reduced, would the building meet the height restriction. Mr. Otte said that it would exceed the height even if it were a flat roof. Mr. Bartolt commented that he agreed with the foundation problem for attaching the garage.

Mr. Price asked how visible the garage would be from adjacent properties. Ms. LeCount showed the location on the map and said that it would be visible from two adjacent houses. There is vegetation on Hanley Road that would screen the garage. Mr. Price asked if a breezeway would be considered an attachment to the house. Ms. LeCount said that the breezeway would need to be entirely enclosed to qualify.

Mr. Hill asked if an enclosed breezeway would work. Mr. Otte said that it would be additional cost and would not look attractive and look like it is forced to meet the regulation. The location of the garage would also change. They need to separate the garage from the house by at least 12 feet to avoid foundation issues. Mr. Hill asked if the garage were located further to the rear of the property would it help to meet the height requirement. Mr. Otte commented that the contours towards the rear of the property are about the same as the proposed location.

Mr. Reininger noted that the topography is challenging on the site and the size of the building is not in excess of the size of the house. He asked if the property owners have legal access to the driveway to the east of the house. Mr. Otte said that the driveway is on the owner's property and they have easement rights. Mr. Reininger asked if there are any plans to change the configuration of the driveway from Hanley to avoid the sharp angle. Mr. Otte said that they do not plan to make any changes since the proposed garage is for occasional use for recreation vehicles.

With no further discussion a motion was made by Mr. Hill and seconded by Mr. Bartolt to approve the variance as requested.

Roll Call: Mr. Hill – aye, Mr. Price – aye, Mr. Reininger – aye, Mr. Bartolt - aye.

Minutes Approval:

It was noted that only two of the members in attendance were present for the previous meeting. There was also a minor correction to the minutes. It was decided that the approval of the minutes would be deferred to the July meeting.

Administrative Issues:

Mr. Reininger noted that the Co-op had prepared a report of accessory structure standards for other surrounding jurisdictions. He noted standards that gave additional flexibility. Mr. Hill said that he thinks that the 15 foot height restriction is rather low and that perhaps 18 feet would be better to accommodate recreational vehicles. Ms. LeCount said that staff could review this and

make a recommendation to Zoning Commission. This could possibly be done in August. The possibilities include basing the accessory building size based on lot size rather than principal building size. Mr. Reininger said that he would like to keep accessory structures as subordinate to the main residential use. Mr. Hill said that consideration could be given to staff ability to give variances for additional height or size within 10 percent of the standard.

Unfinished Business: None.

Next Meeting: July 26, 2017 meeting.


Administrative Matters: Ms. LeCount introduced John Miklos and noted that he prepared two of the staff reports and the accessory building report. He is a graduate student at the University of Cincinnati.

With no further business the meeting was adjourned by Mr. Reininger at 8:15 pm.

Respectfully Submitted:


Marty Kohler, Senior Planner

Secretary:


Timothy A. Price, Secretary

Accepted by:


Ronald J. Roberto, Chairman