

MINUTES OF THE BOARD OF ZONING & BUILDING APPEALS, 3-3-21

WEDNESDAY, MARCH 3, 2021 COUNCIL CHAMBERS, AVON CITY HALL

The meeting was called to order at 7:00 P.M. by Chairman Chauncey Miller.

Present: Michael Bulger; Bill Hricovec; Bruce Klingshirn; Mark Ladegaard; Chauncey Miller; Pam Fechter, Planning Coordinator; John Gasior, Law Director; Rick Schneider, Zoning Enforcement Officer and Jill Clements, Secretary.

MINUTES OF THE REGULAR MEETING – FEBRUARY 3, 2021

A motion was made by Mr. Ladegaard, seconded by Mr. Klingshirn to dispense with the reading of the regular minutes of Wednesday, February 3, 2021 and to approve said minutes as amended. The vote was: “AYES” All. The Chairman declared the motion passed.

ADDITIONS/DELETIONS

STRAUSS APPEAL

James Strauss is requesting a 26' side yard setback variance from C.O. 1262.08(b)(B) Accessory Building Setback Requirement to allow the construction of a 30'x40' detached garage to be located at 38735 Detroit Road.

James Strauss is sworn in by Mr. Gasior.

Mr. Strauss says that follow up from last meeting, he went back to get closer measurements and he did that. He submitted two newer drawing, one with the garage parallel to the property line the other with it parallel to the house. Mr. Strauss says he is trying to preserve at least 8' between the existing driveway. Mr. Strauss says the one that is parallel to the black top driveway will be more visibly appealing and his preferred plan but would be ok with either of them.

Mr. Ladegaard says he would agree the one parallel to the driveway is the better way. Mr. Bulger says he agrees wit the one square to the driveway. Mr. Miller says the 24 sq. ft. variance was approved last meeting.

A motion was made by Mr. Bulger, seconded by Mr. Klingshirn to approve a 26' side yard setback variance from C.O. 1262.08(b)(B) Accessory Building Setback Requirement to allow the construction of a 30'x40' detached garage to be located at 38735 Detroit Road. The vote was: “AYES” All. The Chairman declared the motion passed.

CLEVELAND CUSTOM HOMES-CARTER APPEAL

Jeff Crawford of Cleveland Custom Homes representing Matt and Missy Carter is requesting a 12' rear yard setback variance from C.O. 1268.03(d)(3) Yard Requirements to allow the construction of a new single-family home to be located at 33604 St Francis.

Jeffrey Crawford is sworn in by Mr. Gasior.

Mr. Crawford says that last time they were requesting a little over 12' variance and went back to the drawing board to redesign the house again to push that section of the home in and will only need an 8' variance. Mr. Crawford says they pushed the right side of the house and pushed it into the garage to allow the house to fit on the property and it will only impact that one little corner. Mr. Crawford says they will be doing some landscaping buffer along with a fence.

Mr. Hricovec says with the new information, it's helpful to decide. He thought that the finished grade will be a little above Mr. Morahan and with the fence and the elevation difference that is something they

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would need to work out. Mr. Crawford said he thought they were only allowed a 4' fence but they do allow a 6' fence if they want to go up more. Mr. Hricovec says Mr. Morahan was pretty adamant about that and he's trying to see a way to make both happy. Mr. Ladegaard confirms they will be about 8' variance this month. Mr. Crawford says yes.

Ms. Fechter says that she spoke with Mr. Morahan today, that he called and couldn't attend tonight and wanted to reiterate, he is 100% against the variance.

Mr. Crawford says they visited him again to share where they were at. Mr. Klingshirn asks if they would be opposed to going with a 6' fence.

Matt Carter is sworn in by Mr. Gasior.

Mr. Carter says he talked to Mr. Morahan and he did have some concern with the fence and the level, and they would do whatever they can do to reassure him with the drainage. Mr. Carter says they are open to the 6' fence.

A motion was made by Mr. Bulger, seconded by Mr. Klingshirn to approve an 8' rear yard setback variance from C.O. 1268.03(d)(3) Yard Requirements to allow the construction of a new single-family home to be located at 33604 St Francis. The vote was: "AYES" All. The Chairman declared the motion passed.

WILLIS APPEAL

Mark Willis is requesting a 0' side yard setback variance from C.O. 1262.08(b)(2)(B) Accessory Building Setback Requirements and a 420 sq. ft. variance from C.O. 1262.08(a) Maximum Area and Number of Accessory Buildings to allow the construction of a 20'x20' detached garage and make the existing barn compliant located at 39016 Detroit Road.

Mark Willis is sworn in by Mr. Gasior.

Mr. Schneider says the variance that is requesting for is not for the garage, he is allowed to have a 500 sq. ft. detached garage, the square footage is for the existing barn that has been there for 100 years and the zero setback.

Mr. Klingshirn says were just dealing with the old barn right. Mr. Schneider says yes this is a variance for the existing barn. Mr. Klingshirn asks if they are going to fix it up and Mr. Willis says yes.

A motion was made by Mr. Ladegaard, seconded by Mr. Hricovec to approve a 0' side yard setback variance from C.O. 1262.08(b)(2)(B) Accessory Building Setback Requirements to make the existing barn compliant at 39016 Detroit Road. The vote was: "AYES" All. The Chairman declared the motion passed.

A motion was made by Mr. Ladegaard, seconded by Mr. Klingshirn to approve a 420 sq. ft. variance from C.O. 1262.08(a) Maximum Area and Number of Accessory Buildings to make the existing barn compliant at 39016 Detroit Road. The vote was: "AYES" All. The Chairman declared the motion passed.

JONKE APPEAL

Cory and Rochelle Jonke are requesting a 11.39' rear yard setback variance from C.O. 1262.04(d)(4) Lot and Yard Requirements to allow the construction of a covered patio to be located at 36417 Montrose Way.

Cory Jonke is sworn in by Mr. Gasior.

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Mr. Jonke explains they want to build a covered patio to create an outdoor space for this family and will be esthetically pleasing. An audience member inquiry about what the address is, and it was confirmed 36417 Montrose Way.

A motion was made by Mr. Bulger, seconded by Mr. Klingshirn to approve a 11.39' rear yard setback variance from C.O. 1262.04(d)(4) Lot and Yard Requirements to allow the construction of a covered patio to be located at 36417 Montrose Way. The vote was: "AYES" All. The Chairman declared the motion passed.

DAVIS APPEAL

Chadwick Davis is requesting a 14.51' rear yard setback variance from C.O. 1262.04(d)(4) Lot and Yard Requirements to allow the construction of a pergola over patio to be located at 36319 Wendell St.

Chadwick Davis is sworn in by Mr. Gasior.

Mr. Davis says they built a pool a few years ago and have no sun protection so they decided to move forward with a pergola structure to help provide some shade. The structure has automatic lovers and it does not go out as far as the patio, but it does break into the rear yard setback.

Mr. Ladegaard asks if this automatically opens and closes with the sunlight? Mr. Davis says it detects wetness so it will close when it rains or if there is dew. Mr. Ladegaard says then you can control it anytime you want. Mr. Davis says, yes.

A motion was made by Mr. Bulger, seconded by Mr. Klingshirn to approve a 14.51' rear yard setback variance from C.O. 1262.04(d)(4) Lot and Yard Requirements to allow the construction of a pergola over patio to be located at 36319 Wendell St. The vote was: "AYES" All. The Chairman declared the motion passed.

HICKS APPEAL

John Nash of Nash Project Management representing Brad Hicks is requesting a 19' rear yard setback variance from C.O. 1262.04(d)(4) Lot and Yard Requirements to allow the construction of a covered patio to be located at 36284 Wendell St.

John Nash is sworn in by Mr. Gasior.

Mr. Nash says the Hicks reached out to him to do something in their back yard. They have an existing paver patio that is falling apart, the steps are crocked, and the walls have already been straighten one time. Mr. Nash says as the process grew, they requested to have a minimum step down as Mrs. Hicks struggles with steps and they want to stay home because of COVID but want to be able to enjoy their back yard. Mr. Nash says they decided to put a roof structure on, they are utilizing the same space that is there with the existing paver area. Mr. Nash says they will put an elevated patio with a roof, and it passes the rear building line by about 19 feet. Mr. Nash says there are multiple covered patios in the area, and he did one just down the road that was 18' variance. Mr. Nash says this is where they want to be in the summer and are limited with the sun.

Mr. Klingshirn says he sees the bricks are falling apart and he is going to raise it a foot and a half. Mr. Nash says he is going to tear out the existing patio, come in and pour a concrete wall so he can lift slab out of the ground then put rail around and steps down into the yard. Mr. Nash says the owner has contacted Cahoon Nursery and they are doing trees and adding more buffering around the back and some plants around the patio, they have a whole landscape package. Mr. Nash says the lot is like a trapezoid

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and the area they are putting the cover is on the short side of the lot. Mr. Nash says there are four lots, this one and the 3 to the east that narrow down. They are in a touch spot as they want the coverage from the sun.

Mr. Hricovec says he was there and measured from the neighbor and they were 20' out and your going 24 feet. Mr. Hricovec says they got an email from one of the neighbors who has a little bit of an issue. Mr. Hricovec says when he looked at it the first thing, he noticed was it was high, and they are elderly and was looking at the grade area and noticed the drain was off the corner. He says the variance is one thing but when you put it up higher than you have some drainage issues. Could they consider adding a step or two. Mr. Nash says it does fall off a little bit but the whole purpose is so she can get onto the patio with a 4-inch step which sounds like a lot but its not really. They will do some grading around it and some landscaping so its not going to look that big. Mr. Nash says to Mr. Hricovec that he was looking to the house to the west with the kitchen and Mr. Hricovec says correct, Mr. Nash continues to say if you take the line where their cover ends directly across its pretty closes to where theirs will end. Mr. Nash shows an ariel photo showing how in line this cover and the neighbors and it shows the trees that are there and with the additional of other landscaping, you won't be able to see much.

David Gormley, 36285 Montrose Way is sworn in by Mr. Gasior.

Mr. Gormley says he knows Mr. Nash, he built his first home. Mr. Gormley says he's been living in Avon for 22 years and have followed every rule in zoning that the City put out there and followed everything of the HOA and done it all by the book. He continues to say when you look at the variance they are looking for, its 19 feet but when you do the math its 38% reduction. Mr. Gormley says when you look at the property which points to his benefit, that one corner comes down and then you put the structure out there and you have 31 feet. He says when Mike Lapos built his home, they knew what they wanted to build and a couple lots were less money but the builder said we can't fit it on there, we have to have 50' setback. Mr. Gormley says he then sold them his existing lot and said he can fit the house on the lot, but they will have to reverse the driveway and do some stuff, but we can do it. Mr. Gormley says he spent \$30,000 more to have a bigger back yard to fit his home on it. Unfortunately, where they live the homes are getting bigger and the lots are getting smaller and he paid extra money to put his house on there. Mr. Gormley cover patio was built with he house and he says he remembers when they were building Mike Lapos says Dave do you want to make this bigger and I said yes but then he was told no you can't do it because your over the setback and would need a variance and he said nope, I'm ok. Mr. Gormley says 31' to the fence and he says he is 100% against this variance as it disrupts his quiet enjoyment of his property. He says you will someone sitting closer to him and to be quite honest if he could go back and add more property his house he would. Mr. Gormley says he loves his house, Avon and his development and there's just not enough room and its too close. Mr. Gormley says he is a licensed real estate agent and he personally thinks it would lower the value of his house; some neighbors think it would raise it. He gives an example that he met with a customer and they wanted him to list their home and they had an idea of what they wanted and he pulled all the comps and he's all excited that someone actually thinks their home is worth less than what it is. He goes over and looks at the house and the way it is set and the back yard and the neighbor and the setbacks, it was ridiculous and he said they will struggle to sell the home because of the setback. Mr. Gormley says it's a bit extreme of what he would have if the Board allows this variance, but at the end of the day, people want their space. Mr. Gormley says he bought that lot and pays his taxes. He knows the neighbors and they tried to put some trees, but all the buffer is on his property. They may have a few oak trees or pine tress and they spent money on some trees, and they die. His back yard is from day one with trees and is 100% against this, its not fair to him as the homeowner behind them.

Mr. Hricovec says the patio already goes out there that far so obviously they sit out there, the roof is to cover what is there. Mr. Gormley says he thinks it puts or takes away from his visual back yard and audio

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enjoyment. Mr. Gormley says at what point can he come and ask for a 30' variance and extend his out, where do we stop. Mr. Gormley says he's listening, and he isn't that type of guy, if it was a foot or two but he is thinking he doesn't want his property value to go down. Mr. Klingshirm adds to what Mr. Hricovec is saying is the patio is there now, so they aren't going any further, they are just putting a cover over it. Mr. Gormley says but they go against the zoning. Mr. Gormley says he would have made his bigger but his builder said no. Mr. Gormley says he has been doing everything right by the book for 22 years, paying his taxes, keeping his yard up, going by all the rules and regulations set forth and is very 100% against it.

Mr. Schneider says he applauds Mr. Gormley for doing things by the rules but if everyone else in Avon did that, these guys wouldn't have a job. Mr. Schneider says that is what this Board is here for, they look at the situation and the hardship. This project will enhance their values so he doesn't see how it will lower Mr. Gormley's. Mr. Gormley says why would we put a 50' setback in a neighborhood that he bought 16 years ago, and he thought it was small then. Mr. Schneider says you had the opportunity to come and ask for a variance just like everyone else does or can. Mr. Gormley says why would we have a 50' setback if its going to be granted to change it.

Ms. Fechter says that the only reason we are here is that Highland Park requires them to attach it to the house. They could cover the patio and not get a variance but because Highland requires that, once its attached to the house it then becomes part of the house. The Hicks are stuck as the HOA has regulations, but we wouldn't require them to attach it to the house and they wouldn't be here, its because of the HOA rules. Mr. Schneider adds they could put it 5' off the property line as well. Mr. Gormley says he's going by the rules and 31' from the back of his property, a structure attached to the house and he has a right to be here to tell them how he feels. He says he can't be held accountable for having a bigger lot and they can have a bigger structure. Mr. Gormley says he is here stating facts and percentages.

Mr. Miller says with the HOA requirement to attach it the house, its difficult. The Board does get a lot of these as more people want to utilize their homes more. Mr. Bulger says for his clarification, where the existing patio is, you aren't going any farther than what the existing patio is. Mr. Nash says they are not going any further that what is there. Mr. Nash says he understands, but if you are sitting on the patio right now talking, there isn't going to be any difference between when they put the roof on or where its been the last 15 years. All they are doing is putting a roof structure over existing.

Bradley and Roseann Hicks are both sworn in by Mr. Gasior.

Mr. Hicks says if you look at this project, it fundamentally is the same footprint of what they have now. The one now is curved, Mrs. Hicks says they aren't going as far as the curve, its inside that wall. Mrs. Hicks says it quiet because they don't go out there because it's a tripping hazard and the steps are so bad. Mrs. Hicks says when they bought the house 8 years ago, they had a grill and the wall that the grill was built into fell and took off part of the siding, so they must have the wall rebuilt. Mrs. Hicks says the neighbor talks about peace and quiet it's because they haven't been able to enjoy being out there. Mr. Hicks says as terms of increasing noise level, if they are out there on the patio, weather there is a roof over or not, its no different. They aren't moving any closer to the neighbors, they are just putting a roof over the patio. Mrs. Hicks says they are raising it as she does have problems with tripping and falling as she has been sitting on the front porch, but they want to enjoy the back yard. When they first moved in, a big portion of their yard was wooded and had dead trees and poison ivy. They pulled all that out and starting landscaping, but they knew they wanted to do the patio. Mrs. Hicks says they did plant evergreens, but they didn't grow as they were miss informed and now talking to Cahoon they gave them more selection to help add privacy. Mrs. Hicks says they are a lot closer to the neighbor on the right side and she is excited for them. They are not putting in a fireplace, they have a little grill, and they want to be able to use the back patio with the kids and grandkids. Mr. Hicks says in terms of line of sight, Mr. Nash

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shows the picture of looking back and it lines up with their neighbors, but they have planted some nice trees and they are putting additional evergreens that will grow back there. Mr. Hicks says the point is, they are not going to see each other. Mr. Hicks says they aren't getting any closer, noise shouldn't be an issue and visually they will be blocked off.

Mr. Gormley says there are rules and you need to bend them a little, but you are talking 38% on the back area and that's a big number. He says he's known Mr. Nash a long time and if it was a foot or two but its just no right to allow, its too much of a variance.

A motion was made by Mr. Ladegaard, seconded by Mr. Klingshirn to approve a 19' rear yard setback variance from C.O. 1262.04(d)(4) Lot and Yard Requirements to allow the construction of a covered patio to be located at 36284 Wendell St. The vote was: "AYES" All. The Chairman declared the motion passed.

GARLITZ APPEAL

Erik and Nicole Garlitz are requesting a 5' variance from C.O. 1478.03 Swimming Pools-Location to allow the construction of a new inground swimming pool to be 10' from the house instead of the required 15' located at 35160 Emory Drive.

Erik Garlitz is sworn in by Mr. Gasior.

Mr. Garlitz says the project under consideration is an inground pool installation that they would like to do this year. Mr. Garlitz says the pool will be less then 15 feet from the bump out of his house. Mr. Garlitz says he is respecting his neighbors so that the pool is compliant and that any buffer he creates is pleasing and creates privacy for both him and his neighbors. Mr. Garlitz says his lot is unique and when they purchased the house 13 years ago a pool wasn't a thought.

A motion was made by Mr. Klingshirn, seconded by Mr. Hricovec to approve a 5' variance from C.O. 1478.03 Swimming Pools-Location to allow the construction of a new inground swimming pool to be 10' from the house instead of the required 15' located at 35160 Emory Drive. The vote was: "AYES" All. The Chairman declared the motion passed.

REYNOLDS APPEAL

Doug Reynolds is requesting a 45' side yard setback variance from C.O. 1262.08(b)(B) Accessory Building Setback Requirement to allow the construction of a 30'x50' out building to be located at 31880 Mills Road.

Doug Reynolds is sworn in by Mr. Gasior.

Mr. Reynolds says that he is building a house on the property and would like to have the driveway lined up with the side load garage the barn the best he can. Mr. Reynolds says he spoke with both neighbors and they don't have any issues. He says he it will be about 350' off the road and won't be an eye sore.

Mr. Miller says they have granted some variances in that area in the past and he understand the width of the lot creates some difficulty. Mr. Reynolds says he is under the square footage but with the width of the lot its impossible. Mr. Klingshirn asks if he would consider moving it over a little bit more off the line knowing they want to line it up with the driveway. Mr. Reynolds says he would think about it but he's trying to line it up best he can so in the future he could put a lean too and fireplace off it. The lot is wooded, and he would like to see them. Both neighbors have no issue with the location but if he had to, he would consider it but would prefer not to. Mr. Reynolds says he is improving the property a lot as the City is requiring him to fill in the ditch at his cost.

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A motion was made by Mr. Bulger, seconded by Mr. Klingshirn to approve a 45' side yard setback variance from C.O. 1262.08(b)(B) Accessory Building Setback Requirement to allow the construction of a 30'x50' out building to be located at 31880 Mills Road. The vote was: "AYES" All. The Chairman declared the motion passed.

COMMENTS

Mr. Gasior asks if this last one has a house on the lot. It was told he is building one and then the barn.

ADJOURN

A motion was made by Mr. Bulger, seconded by Mr. Klingshirn to adjourn. The vote was: "AYES" All. The Chair declared the motion passed. The meeting was adjourned at 8:01P.M.

ATTEST

CHAIRMAN

DATE