

1 XENIA TOWNSHIP BOARD OF ZONING APPEALS

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3 IN THE MATTER OF:
 4 THE PUBLIC HEARING
 5 VARIANCE, SECTION
 6 504.1, Accessory
 7 Structure in Interior
 8 Yard, 1611 U.S. 68
 9 South, Xenia, Ohio

10 - - - - - X

11 TRANSCRIPT OF BOARD OF ZONING APPEALS
 12 PUBLIC HEARING
 13 April 15, 2025

15 BZA MEMBERS PRESENT:

- 16 Nathan Anthony, Chairman
- 17 Virgil Ferguson
- 18 Janis James
- 19 Darren Jones
- 20 Aidan Kolbe

21 ALSO PRESENT:

- 22 Alan Stock, Xenia Township Zoning Inspector
- 23 Brian Gravunder, Esq.

24 - - -

25

1 (6:00 p.m.)

2 P R O C E E D I N G S

3 MR. ANTHONY: Good morning, call to
4 order.

5 My name is Nathan Anthony. I'm the
6 Chairperson of the Xenia Township Board of
7 Zoning Appeals.

8 I'm calling this meeting to order
9 officially.

10 At the request of these Applicants,
11 Mr. and Morris, we are meeting publicly to discuss
12 their appeal to our zoning instrument.

13 As Chairperson, I do welcome you. I
14 thank you for being here and encourage you to
15 participate.

16 I'm going to review a few basic
17 rules before we get started. We do try and run an
18 orderly meeting so I'll specify some of the
19 procedures.

20 Please turn your phones to silent
21 for less distractions.

22 Each person who plans on talking,
23 please fill out one of these orange forms for
24 record sake.

25 The application will be read in by

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1 the Township Administrator, Mr. Stock, and then
2 the Applicant will present evidence to support a
3 petition for this variance.

4 Because the Ohio courts have
5 determined the decisions of this board to be an
6 administrative or quasi-judicial capacity, it is
7 necessary to administer an oath for perfecting of
8 the witnesses and ensuring the accuracy of the
9 decisions to be made tonight.

10 In a little bit, we'll do the Pledge
11 of Allegiance, and I'll administer the oath so
12 please remain standing after that.

13 All testimony will be presented to
14 the board from the podium right here. We'll begin
15 with the speaker's name, confirming they are under
16 oath, and then their testimony.

17 Just a reminder, testimony is to
18 expressly set forth facts and not opinion or
19 emotions. Tonight's meeting is being recorded.
20 We'll provide for Examination and Cross
21 Examination of the facts regarding this
22 application.

23 As Chairperson, I do reserve the
24 right to limit public input and move to the
25 board's deliberation of this application, fact

1 testimony received and the zoning instrument.

2 The public input time will be very
3 clear. I'll open both discussions and say the
4 time, and there will be ample opportunity before
5 it's closed, and then it will be a black-and-white
6 when it's closed.

7 The Board will decide the issue in
8 one of three possible decisions: To approve, in
9 whole or in part; to reject in whole or part; or
10 to continue or reschedule the hearing to a
11 different date. The date and time will be
12 announced during this meeting if that were to
13 happen. The Applicant may also withdraw.

14 The decisions of this BZA do not
15 become effective until the expiration of five days
16 from the date of entry.

17 A BZA decision is final order.
18 Individuals adversely affected by the decision
19 can, under the provision of Ohio Revised Code
20 2506.04, appeal to the Court of Common Pleas.

21 We will now stand and honor our
22 country by the Pledge of Allegiance, and please
23 remain standing for me.

24 (Pledge of Allegiance.)

25 (Oath administered to speakers.)

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1 MR. ANTHONY: Thank you. To the
2 Board members, have you read and considered this
3 application today?

4 APPEALS BOARD MEMBERS: (In unison.)
5 Yes.

6 MR. ANTHONY: And do you intend to
7 participate in the entire procedure and voting
8 when the question is asked?

9 APPEALS BOARD MEMBERS: (In unison.)
10 Yes.

11 MR. ANTHONY: Mr. Stock, would you
12 please call roll.

13 (Roll call.)

14 MR. ANTHONY: With us, we do have
15 Mr. Brian -- how do you say your name?

16 MR. GRAVUNDER: Gravunder.

17 MR. ANTHONY: And Sue Terry.

18 Mr. Stock, is this lawful and ready
19 to be voted on today -- to be considered today?

20 MR. STOCK: What you have in your
21 packets under Exhibit A is the zoning application.

22 With that application is also the
23 questions that you have for the Duncan standards,
24 as well as the four questions under our zoning
25 instrument to be answered for a variance zoning

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1 appeal.

2 In your packet, Exhibit B, you've
3 got the Revised Code 519.12. You will notice that
4 all of the checklist provided for you I think has
5 been done within the time line. You also have the
6 legal notice, you've got the sign, you've got the
7 letter that was sent out, you've got the website,
8 and, incidentally, you also have the neighbors
9 within the 500-foot radius.

10 And Exhibit C, you have the Duncan
11 standards -- well, you have a staff report, you've
12 got the Duncan standard, and in red, you have what
13 the Township response is. You also have a
14 Resolution 685 with those four questions, and the
15 answer in red.

16 Then you've got a Section 504
17 regarding accessory buildings. You've got the
18 information from the zoning instrument for the
19 required yard. You've got the setback information
20 from the zoning instrument, and you've got Section
21 404, the schedule of yard and lot requirements.

22 staff report is the
23 Petitioner-owned .975 acres in that district with
24 a single-residential structure.

25 The home was sold to Petitioners in

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1 August of 2024. The Township became aware of an
2 accessory structure being built due to a
3 complaint. The 1,500 square foot structure was
4 approximately 90 percent completed.

5 The Petitioner did not apply for a
6 zoning permit for the 1,500 square foot structure.

7 Upon discovery, there was found to
8 be another new 120-square-foot structure that also
9 did not have a zoning permit. An application was
10 sent to Petitioner and it was returned incomplete.

11 The Petitioner did not apply for a
12 building permit in Greene County building
13 regulations. Greene County went out to the
14 property to red-tag the building and found the
15 Petitioner had also not pulled a permit before
16 residing and roofing the residence.

17 To date, no Greene County permit has
18 been applied for. And, again, that was 10 days
19 ago so -- isn't as of today, but 10 days ago when
20 you received this information.

21 The Township sent a letter of
22 noncompliance to the homeowner with an application
23 for a BZA public hearing since the building did
24 not meet the necessary setback requirements.

25 The structure is roughly 10 feet

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1 from the lot line, which is approximately 9 feet
2 from the neighbors' driveway.

3 During this time, the Township was
4 made aware that the Petitioner had not asked the
5 neighbor to use the driveway for construction
6 traffic.

7 Upon receiving the application of
8 the BZA, the Petitioner was asked to provide a
9 letter from the neighbor for permission to use
10 their driveway to access the structure. That
11 permission letter has not yet been received.

12 Since the structure has been
13 completed and an access ramp to the floor
14 elevation has been created, 9 feet of which has
15 been constructed on the neighbors' property.

16 You then have a photo of the lot.
17 You have photos of the barn, and you also have the
18 lot area. The lot area is compliance. The
19 current percentage is 8 percent, and with this new
20 1,500 percent -- or this new 1,500-square-foot
21 structure, they would still be underneath the 15
22 percent that's required.

23 You also have the letter that was
24 sent out February 19th to the homeowner.

25 Exhibit D is the agenda for this

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1 evening.

2 Exhibit E is what we had called in
3 for James Graham from 1644 U.S. 68, called to ask
4 what the variance was about after receiving the
5 information. He stated that he was okay with it.

6 Robert Atkinson from 1651 U.S. 68,
7 Mr. Atkinson called to ask what the sign on 68 was
8 about. After receiving the information, he stated
9 he only wanted information, did not have any
10 opinion on the matter.

11 Seeing that we have complied with
12 everything that Revised Code 519.212 has stated,
13 you have every opportunity to hear this tonight,
14 and if so, render your findings with the
15 resolution.

16 MR. ANTHONY: Thank you. Before we
17 call them up, do you mind just pulling up the GIS
18 on the computer?

19 MR. STOCK: Absolutely.

20 MR. ANTHONY: At this time, we're
21 going to bring the Petitioner up, Mr. or Mrs.
22 Morris. Please affirm you're under oath, state
23 your name, and you can make a presentation.

24 MR. MORRIS: Darin Morris, 1611 U.S.
25 68 South.

1 MR. ANTHONY: You're under oath.
2 Thank you, sir.

3 MR. MORRIS: Yeah, I was -- I
4 apologize for all this. It's not how I would have
5 done things if I had realized.

6 Several years ago, we lived in Miami
7 County. We're originally from Greene County, but
8 we lived in Miami County and redid a structure
9 that had a foundation, and I was told then that if
10 it was agriculture, A1 agriculture-zoned and it
11 was a pole building, you didn't have to have a
12 permit in Ohio. So I didn't apply for a permit.
13 And I found out, of course, when the county left
14 the thing and the Township -- you guys notified me
15 that I do have to have a permit.

16 I had searched -- I did a Google
17 search for Xenia Township, and it said offset
18 buildings, 10 feet. That's what I went by. I
19 didn't realize -- I didn't do it -- I didn't do
20 well enough in the research to realize it was 40
21 feet of setback and A1 agriculture, that there was
22 a difference.

23 So I built this -- we downsized from
24 around the corner where we used to live, and I
25 have three classic cars that I need to put under

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1 roof somewhere. And right now, they are sitting
2 at my father's house, and he just lost two of his
3 to hail damage that was sitting outside because of
4 mine, so I built this to store these cars in.

5 I had contracted this back in
6 October, and so the previous owner, I had
7 discussed everything with, because that was
8 actually my cousins, and so -- and then
9 Mr. Everett bought it after that. And so I think
10 he got surprised when I started putting the
11 building up, which I understand. I didn't realize
12 he wasn't informed that was all going to happen,
13 so -- but my intention is to improve, not to take
14 away. And where the old wooden shed with the
15 broken foundation is down -- it was sitting there,
16 and put this up. This is another structure. And
17 we actually added 10 foot to it, because we now
18 have the dining room in our house because it's
19 much smaller, and so we put a little room on the
20 end so that on Sunday afternoons, my kids -- both
21 my kids and their families come over and we have
22 dinner after church.

23 So we put a dining room table out
24 there, again, because it won't fit in the house,
25 and that room, we use that with the porch. So

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1 that actually added length to the building to do
2 that. But --

3 MR. ANTHONY: Okay.

4 MR. MORRIS: Any questions?

5 MR. ANTHONY: So we'll open some
6 board for clarifying questions, Mr. Morris, and
7 just for reference out here for the general
8 public, if you do plan on talking to your public
9 input and you want to ask questions of Mr. Morris,
10 you will address us and we'll bring it back up if
11 you need to clarify things just for clarification.

12 Any questions for Mr. Morris?

13 MR. JONES: You said Everett bought
14 what property?

15 MR. MORRIS: The way that property
16 has always been one owner, but it's two lots.

17 MR. JONES: That's the lot where the
18 buildings are?

19 MR. MORRIS: Exactly. Okay. So my
20 cousins owned it before, and my daughter bought
21 the house where I'm at now. And then they sold
22 the other lot this January, I think.

23 MR. JONES: Okay. That's the
24 Everett; right?

25 MR. MORRIS: Yeah. Yeah.

1 MR. FERGUSON: Okay. Do you have
2 any idea where the septic system is?

3 MR. MORRIS: It's right over there.
4 That's the problem, this is all hill, of course,
5 incline. But the septic, the leach field is right
6 over here. The tank is here, and that's in there.
7 So I can't go that way, and I still couldn't
8 get -- I couldn't get 40 foot even with that. I
9 would have to put it right up against one end of
10 the house, and then I still would have been
11 pushing over against 36 -- Lot Number 36 -- but I
12 couldn't put it on top of the septic system anyway
13 so ...

14 MR. JONES: Didn't your builder
15 realize he needs a permit?

16 MR. MORRIS: Well, I used a builder
17 that I've used in the past, and he is from
18 Highland County, and he asked and I said no,
19 because he usually doesn't work in Greene County.
20 So, again, that was on me.

21 MS. MORRIS: I was surprised that
22 the builder didn't --

23 MR. MORRIS: Yeah. But like I
24 said, we actually built a garage over when we
25 lived on Stone, and we didn't get it from then.

1 So I really didn't think -- same thing, we tore
2 down an old building and put a new building in.

3 MR. ANTHONY: So he took your word
4 and went to town?

5 MR. MORRIS: Yeah. Yeah, because
6 we had used him before.

7 MS. KOLBE: I follow your story. I
8 got confused along the point of, I recognize --
9 and not understanding -- I have been told living
10 in agricultural -- on an agricultural lot, I've
11 been told, "Hey, you don't need a permit," and I
12 know that not to be true, obviously, sitting in my
13 seat. But I get confused at the point of the
14 story when you were told by Greene County and
15 red-tagged, but then still moved forward.

16 So tell me what happened at that
17 stage of the pathway.

18 MR. MORRIS: Well, the only thing
19 that happened after Greene County had flagged me
20 was they put the doors on and the concrete floor
21 in, and that's because that was the next day after
22 I got the notice from the county, and it was
23 already scheduled, and so I couldn't stop it from
24 happening.

25 So, like I said, it literally was

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1 less than 24 hours later, they were already on the
2 way.

3 MS. KOLBE: If you had called them
4 and said, "No, don't pour the concrete" --

5 MR. MORRIS: I would have, but I
6 would have had to pay for the concrete and
7 everything, and then pay for it again later.

8 MS. KOLBE: Okay. My other question
9 is, Alan had mentioned, you know, as of 10 days
10 ago when you hadn't pulled a building permit,
11 because that's when we prepared that packet, is
12 that still accurate?

13 MR. MORRIS: So the county contacted
14 us, and I had the letter from you guys in the
15 mailbox. I hadn't gotten it out of the mailbox
16 yet.

17 The county left the thing on the
18 door about, "We're replacing the roof."

19 Well, I didn't realize -- and
20 neither did my contractor since he is from
21 Dayton -- that Greene County has to have a roof
22 permit.

23 So the county flagged that, and then
24 the building.

25 Well, when I called the county to

1 ask about it, she said, "well, don't apply for
2 your building permit until the township approves
3 the building," so I waited. I still have to do
4 that and pay probably a late fee.

5 MS. KOLBE: So I'm understanding
6 you, is no, you're awaiting the results of this
7 meeting?

8 MR. MORRIS: Yeah. Yeah, because
9 she said the township has to approve before ...

10 MS. KOLBE: And if I understand you
11 correctly, even though you got the red-tag and
12 realized you weren't supposed to proceed, you
13 decided not to because you would have expense
14 associated with continuing? Even if you continued
15 to pour the concrete, you would still have to pay
16 for it, so you elected to continue anyway?

17 MR. MORRIS: Yeah.

18 MS. KOLBE: Okay.

19 MR. MORRIS: Yeah. I was just -- it
20 was a matter of, if I stopped it, I was going to
21 pay, and then I was going to pay again if it gets
22 approved, and so --

23 MS. KOLBE: You were aware you were
24 supposed to stop?

25 MR. MORRIS: Yes.

1 MR. JONES: The permit that you're
2 waiting on now is for the roof on your house;
3 correct?

4 MR. MORRIS: Yeah, and the roofing
5 contractor is submitting all of that; yeah.

6 MR. JONES: Okay.

7 MR. MORRIS: That's what initiated
8 everything was the roof on the house, and then the
9 building was there, and that's when it got
10 flagged.

11 MR. ANTHONY: Hang on a second. And
12 you can come to the podium and state your name,
13 and then you can talk as a unit, that's fine.

14 (Reporter interruption for
15 clarification.)

16 MS. MORRIS: Cynthia Morris. So
17 when we got the paper on the door, it didn't say
18 to stop building. That is something that I did
19 ask my husband, like, multiple times, because I
20 said, it doesn't say to stop. And he is like,
21 "Yeah, it is not marked to stop." So we did
22 continue.

23 Then we got the letter out of the
24 mail. That's when I was, like, "Wait a minute.
25 We're missing something."

1 And so we got the letter out of the
2 mail, and the last thing to happen was the
3 concrete. And he called and said, "Hey, we have
4 to go to the township." And he is, like, "I have
5 already paid the guys. They're coming tomorrow.
6 If I stop it, you're going to have to pay them
7 again, because this has already been paid for."

8 So we did choose to go ahead and do
9 it, because we thought, "Well, we've got to pay
10 for it either way, and if we have to take it down,
11 we have to take it down."

12 Does that make sense?

13 MS. KOLBE: But you did receive the
14 letter before the concrete was down?

15 MS. MORRIS: Yes, we did receive the
16 letter before the concrete was down by a day.
17 Now, it was probably in my mailbox.

18 MS. KOLBE: Yeah.

19 MS. MORRIS: By a day, yes.

20 MS. KOLBE: You wanted to get the
21 time line of that information spread.

22 MR. JONES: So that access driveway
23 that you have to get into your building, that's
24 not your property?

25 MR. MORRIS: No. No, the property

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1 line is actually on this side of the --

2 MR. JONES: Where the Blue Line is?

3 MR. MORRIS: Yeah.

4 MR. JONES: Because when I pulled
5 in, I pulled in on that access driveway.

6 MR. MORRIS: Correct.

7 MR. JONES: And I didn't know if the
8 fence post was yours.

9 MR. MORRIS: That belongs to
10 Mr. Everett.

11 MR. ANTHONY: There was no
12 conversation about using the property when you did
13 it, you just did it?

14 MR. MORRIS: Yeah.

15 MS. KOLBE: Have you had a
16 conversation about after that point about
17 accessing the barn?

18 MR. MORRIS: Yes.

19 MS. KOLBE: Do you have a -- so we
20 have some shared property where I live and we have
21 a legal document for easement and everything.
22 Have you worked that out?

23 MR. MORRIS: We have discussed it.
24 There's nothing in writing.

25 MS. KOLBE: Okay. If it were to

1 continue, is that something that you feel like,
2 from your point of view -- not the perspective of
3 that person -- do you feel like from your
4 perspective that's something you would be able to
5 work out legally?

6 MR. MORRIS: Sure.

7 MR. ANTHONY: That's later. Yeah,
8 what -- since it's for what --

9 MR. MORRIS: Since it is what it
10 is, it's not something that I would access much.
11 I would only be driving those cars in and out
12 would be the only time I would do that.

13 I mean, to actually go onto his
14 property -- and I probably could get them out of
15 the garage without doing that, but it wouldn't be
16 very feasible --

17 MS. KOLBE: Yes.

18 MR. MORRIS: -- but yes. See, when
19 this was initiated, like I said, my cousins owned
20 that, and they had already -- we had permission to
21 use the driveway, and so that kind of -- you know,
22 it kind of fell out of my sight, I was so worried
23 about so many other things.

24 MS. KOLBE: You and your cousin
25 didn't write out an easement so that didn't get

1 taken care of?

2 MR. MORRIS: No.

3 MS. MORRIS: So when the contractors
4 came out and started building, they used the
5 driveway and we did tell the contractors, "That's
6 not our driveway," and they did leave stuff on
7 that property, and I was very upset about it at
8 that time, because it was not our property, and we
9 know it's not our property, and we knew that we
10 did not have permission to have that on their
11 property.

12 So I do know that, and I wanted to
13 say that, because we did talk to the contractors
14 about that -- that's not our property -- when they
15 were building the building.

16 MR. JONES: And the property owner
17 never said anything to you at that time?

18 MS. MORRIS: No, nobody said
19 anything to us at that time.

20 MR. JONES: You got that building
21 all the way up without the property owner saying
22 anything?

23 MS. MORRIS: Yes. But without --
24 Mr. Everett talked to us when it was already
25 pretty well built, and then he was like, "oh."

1 So he didn't say anything about
2 anybody being in the right-of-way, which I think
3 we were switching over people at that time.

4 MR. JONES: Gotcha. Thank you.

5 MS. MORRIS: You're welcome.

6 MR. ANTHONY: Maybe I missed
7 something. Walk me through the time line again.

8 Property and ownership of the
9 property next door, switching out with people, can
10 you explain that time line?

11 You started it before your neighbors
12 owned the property?

13 MR. MORRIS: Well, yeah. We --

14 MR. ANTHONY: But it still wasn't
15 your property? Here is my question. Here is my
16 question.

17 MR. MORRIS: Okay.

18 MR. ANTHONY: You started building
19 the property. I know there's some mishmash with
20 the contractor you used on your property, and you
21 said, "Stop," but now I see gravel on the property
22 that has since changed ownership, so it has been
23 added on to, still with no permission.

24 Am I missing something? I'm just
25 trying to understand fully. And somewhere in the

1 middle there, the neighbors bought the property,
2 but it continued to be used as access -- as
3 construction access?

4 MR. MORRIS: Yes, it was. And we
5 talked to the contractor about that.

6 MR. ANTHONY: But they kept doing
7 it, and still now with a gravel ramp up to the
8 driveway; right?

9 MR. MORRIS: Yeah.

10 MR. JONES: Out to the garage;
11 right?

12 MR. MORRIS: Yeah, that was at the
13 end.

14 MR. JONES: Okay.

15 MR. MORRIS: Gravel ramp.

16 MR. ANTHONY: I had to get clear on
17 the time line. I was missing the ownership change
18 in there?

19 MR. MORRIS: Correct.

20 MR. JONES: How long has it been
21 since the ownership of the other property -- when
22 did that change hands from your cousin?

23 MR. MORRIS: I could ask him. He is
24 sitting here.

25 MR. JONES: No, that's okay. If he

1 speaks, we'll ask him then.

2 MR. MORRIS: Yeah.

3 MR. JONES: It's been awhile?

4 MR. MORRIS: February, I think.

5 MR. JONES: Before you started the
6 garage. Before --

7 MR. MORRIS: February, March?

8 MR. JONES: Before you started the
9 garage.

10 MR. ANTHONY: I know it's hard.

11 MS. MORRIS: We contracted the
12 garage in November. We bought the property in
13 August. We contracted the garage in November.

14 So I don't know exactly when they
15 started breaking ground, but we contracted in
16 November, and I think they moved in January or
17 February, they switched over.

18 MR. ANTHONY: In the middle of the
19 process of the barn being built?

20 MR. JONES: Thanks.

21 MS. MORRIS: You're welcome.

22 MS. KOLBE: Can I ask, who -- the
23 access ramp is to the barn; correct?

24 MS. MORRIS: Uh-huh.

25 MS. KOLBE: Can I ask who contracted

1 that?

2 MS. MORRIS: Korman's, the
3 contractor, and we were surprised by it, too,
4 because we didn't realize it was going to have to
5 be up so high.

6 So when I went out, I was like,
7 "Oh."

8 Now, we had talked about, and we
9 still are talking about, if we can get it
10 approved, to make an access point just here, not
11 off the road, but off of our property over to here
12 to come into it so we wouldn't have to bother.

13 We did talk to Mr. Everett, and he
14 said that shouldn't be a problem, that we can make
15 an agreement out.

16 MS. KOLBE: At what point were you
17 aware that it was not entirely on your property?

18 MS. MORRIS: By the time they made
19 that access, the hill up to there, the property
20 was already -- like, it was already built, like,
21 the sides and everything were already on it.

22 MS. KOLBE: Okay.

23 MS. MORRIS: So in -- it was already
24 in the works when it was happening.

25 MS. KOLBE: Once you realized, "My,

1 goodness. This is not my land I built something
2 on," what was your response to that?

3 MS. MORRIS: Well, it wasn't -- I
4 still don't think anything about it being built on
5 my land, because the barn is on my land. It is
6 just that hill of a driveway that's not, and I
7 just -- in my mind -- and you would have to ask my
8 husband what his mind is -- is that we're going to
9 have to come over onto our property and figure out
10 how to get into that.

11 Yes; right now, we don't have
12 that -- a way to get in -- besides their driveway.

13 My daughter lived in my house before
14 I did. She always had access to the driveway with
15 our cousins; always. It was just a verbal
16 agreement, we'd always have access.

17 When we actually closed on the
18 house, I was surprised when they told me, "No, no,
19 that's not your driveway. The only driveway you
20 have is out front."

21 Okay. And so we've already talked
22 about making an access way that's not the
23 neighbors, and he is the one that said, "No, no,
24 we can make provisions with each other so that you
25 guys could use the driveway once in awhile,

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1 because we won't be in there. It's not like we're
2 going to go in and out, like, our driveway. It is
3 for storage of our cars."

4 MS. KOLBE: So it's my understanding
5 that it's your belief that it's okay for you to
6 make modifications to other people's property as
7 long as it's not a building?

8 MS. MORRIS: No, I don't mean that
9 at all; not at all; not at all.

10 Like I said, when the driveway got
11 put in and I went out, I was, like, "I think
12 this" -- but I didn't know where the property line
13 was, you know. It just -- wasn't really
14 modification, it's more just gravel there is what
15 I thought. There's just gravel there. We can
16 move the gravel and it wouldn't be a modification
17 to the property.

18 MS. KOLBE: Can we agree that right
19 now that -- we have changed it, modification. We
20 have changed -- we've added something to land that
21 is not ours? You can choose not to -- other
22 words.

23 MS. MORRIS: Well, I don't -- I
24 don't completely agree, because I think it's just
25 gravel that we could push back if they wanted us

1 to.

2 MS. KOLBE: Okay.

3 MS. MORRIS: It's not like we built
4 up land.

5 MR. JONES: Right.

6 MS. MORRIS: We put gravel there,
7 and we could push off and it would just be on our
8 property then so I don't see that we have modified
9 their property.

10 MR. JONES: You have, because it's
11 not your property.

12 MS. MORRIS: There was gravel on
13 it; yes, I agree with you, but we could change it
14 back to what they wanted, and I do feel bad that
15 it got changed, because I didn't think that that
16 was what it was going to be.

17 MR. JONES: When I went out and
18 looked at your garage, if you modify an
19 entrance -- put another entrance in coming down
20 between your house and your property line, aren't
21 those -- isn't that entrance to that garage
22 almost -- it's less than 10 feet off the property;
23 correct?

24 MS. MORRIS: The entrance is -- is
25 it --

1 MR. ANTHONY: It's nine feet.

2 MR. JONES: Alan?

3 MR. STOCK: It's very difficult to
4 tell exactly where the property line is.

5 So with one of the documents that
6 you have -- I can show it up there if you would
7 like -- it appears to be about nine feet, nine
8 feet from the driveway over or eight feet, and
9 then perhaps nine or 10 feet onto their property.

10 The only way to know for sure is a
11 survey. What I do is, I do the measurements here
12 three or four times and then come up with the best
13 I can do.

14 MS. MORRIS: I have a surveyor
15 coming out, but he didn't get there before this
16 meeting. I was trying to get him before this
17 meeting, and he had a hospital stay. So he is
18 supposed to come in the next week or so, and I
19 know that doesn't help us here.

20 MR. JONES: Well, what I'm getting
21 at is you're not going to be able to swing in
22 those doors and stay on your property. There's no
23 way. I don't think nine feet is enough. I don't
24 think you could do it.

25 MS. MORRIS: And I don't -- I don't

1 know. I can bring him back up. I do know like
2 there was another garage already there.

3 MR. JONES: Right.

4 MS. MORRIS: There was another
5 garage already there.

6 MR. JONES: That was also when that
7 was all one piece of property, and then it got
8 split off.

9 MS. MORRIS: It got split off, and
10 so the garage was still there, and so we were
11 still using that garage, you know, and having to
12 use that driveway.

13 MR. JONES: I gotcha.

14 MS. MORRIS: I'm not saying that it
15 was right or wrong, it was just -- it was family.

16 MR. JONES: I understand.

17 MS. MORRIS: So we really weren't
18 trying to cause a problem with anybody, we
19 weren't. I know, facts only, and so I will
20 give -- we downsized from the Stone Road property,
21 the historic home on Stone Road. We moved here.
22 We did this, you know, knowing that -- I have a
23 son who is on the spectrum, and this is going to
24 be his property where he lives when we pass, and
25 so that's why we bought it so we knew he would be

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1 comfortable here. We knew it was small enough.
2 We thought we would be able to build and put our
3 cars in the garage. So ...

4 MR. JONES: I don't have any more
5 questions.

6 MR. ANTHONY: Heidi?

7 MS. KOLBE: No, I think we're done.

8 MR. ANTHONY: We may call you back
9 up after public discussion.

10 At this time, I'm going to open
11 public discussion.

12 Mr. Stock, it's 6:32.

13 We're going to start with who signed
14 up here, I guess. Actually, you know what? Let's
15 actually start with those with clarifying
16 questions.

17 Just a reminder, when you come up
18 here, you're addressing the board, if some of the
19 questions need Mr. or Mrs. Morris, we can address
20 the facts or we can call them up later and ask the
21 whole space. So don't turn around and ask them
22 directly. We have the reporter that needs one
23 person at a time, and there's a certain order to
24 this process.

25 So those who need clarifying

1 questions or to provide a general statement.

2 MR. EVERETT: I would like to
3 clarify something.

4 MR. ANTHONY: Up to the podium,
5 state your name and whether you're under oath, and
6 then you can do that.

7 MR. EVERETT: William Everett, and I
8 am under oath.

9 MR. ANTHONY: Thank you, and
10 address, please.

11 MR. EVERETT: 1634 Winchester Road.

12 MR. ANTHONY: Thanks.

13 MR. EVERETT: So I'm the one that
14 purchased the property. We purchased it and
15 closed on it the middle of February -- I believe
16 it was February 13th.

17 I -- the Morrisises, the other --
18 they're cousins -- were the ones I bought it from,
19 and I told them that I was going to buy it back in
20 June, and they wanted to wait until the beginning
21 of the year for tax purposes for their farm to
22 actually close on the property. So that's why we
23 waited from June of last year until February of
24 this year to actually close on the property.

25 so the building went -- I think it

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1 went up in the middle -- or January sometime it
2 started. It was about two weeks before I closed
3 on the property. It kind of put me in a weird
4 spot. Nobody had said anything to me. It put me
5 in a weird spot, because I didn't -- at that point
6 two weeks before, I didn't own the property, but
7 the Morrises, their cousins, knew that I was going
8 to buy the property at that point for sure. I had
9 a contract written out with them to purchase it.

10 And so I was a little surprised they
11 didn't tell me about what was going on.

12 So the communication there was a
13 little bit of an issue, but again, like I said, I
14 didn't officially own the property yet, and I
15 don't -- it was really, again, the position of it
16 that really kind of took me by surprise.

17 My plan when I was looking at the
18 property was to put a gate up up here and then
19 refence all of this in for our animals, and I live
20 on the other side, the property directly behind
21 this, and I can't see back here very well, and so
22 I don't like not being able to know who is pulling
23 in and who is pulling out with the stuff that we
24 have in the barns, with all the equipment and
25 stuff. I like to know that nobody has access to

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1 it.

2 So we were going to put a gate
3 here -- which we still can do. The problem is, we
4 have to push that gate all the way back here now
5 because they're going to need access through here.
6 So even -- even if we put a driveway here, like
7 they're discussing, they still have to pull out
8 here on the property to access the door.

9 I'm willing to -- like they said,
10 I'm willing to work with them on whatever that
11 looks like.

12 The real issue I have is what did
13 the Morrises and their cousins know about this,
14 and why didn't they let us know? Why wasn't there
15 a little bit more communication, and it still
16 sometimes feels like there's still a little bit of
17 miscommunication.

18 And I'm a pretty easy-going person,
19 and I will work with you as long as you
20 communicate with me, especially what's going on on
21 my land.

22 I mentioned bringing the driveway
23 out the other way, but there was some discussion
24 about zoning, and that kind of thing.

25 My -- my first thing is: well,

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1 okay, if you didn't care about the zoning of the
2 building, why do we care about the zoning of the
3 four-foot driveway?

4 My biggest concern at this point,
5 after talking to my lawyer, is we can write up
6 something, but the question is in the future.

7 I'm -- like I said, I'm willing to
8 work with anybody. But this is a very permanent
9 structure, and if they move, if their son moves --
10 whoever -- they may not be as agreeable, and
11 there's no other options when you have to pull on
12 to my land to access the building.

13 So that's, kind of, my concerns.

14 Pushing the gate back back here
15 makes it a little bit harder for trailers. We
16 bring a lot of trailers in and out. To bring in
17 back here would make it a little bit harder to
18 make that turn.

19 So, ideally, it would be nice to
20 have a gate here and bring the fence, but if I
21 bring the fence right along here, which -- right
22 along the property line, which I believe I have
23 every right to do, it makes it basically
24 impossible for them -- not impossible, but it
25 would make it very difficult for them to pull in

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1 and out of.

2 MR. ANTHONY: Thank you.

3 MR. JONES: Can we ask him
4 questions?

5 MR. ANTHONY: You can ask questions.
6 Just to him?

7 MR. JONES: Yeah, just to him.
8 Specifically, the corner of their property line,
9 right there is where your -- yeah, right there --
10 how close is that to the edge of that garage?
11 You're talking about your gate placement.

12 MR. EVERETT: Yeah, I would say it's
13 10 feet.

14 MR. JONES: Ten feet back towards
15 you?

16 MR. EVERETT: The building comes
17 basically here where the garage doors are.

18 MR. JONES: That's kind of what I
19 thought when I looked at it. Thank you.

20 MR. ANTHONY: Thank you. Anyone
21 else needing clarifying -- any questions
22 clarified?

23 Anyone in opposition of the
24 variance? Anyone who wants to state their
25 opposition to the variance?

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1 Anyone in favor of the variance that
2 wants to state their approval of the variance --
3 not approval -- their opinion in favor of at the
4 podium publicly, other than the presenter?

5 Any clarification from the board
6 members from Mr. and Mrs. Morris?

7 MR. FERGUSON: I don't believe I do.

8 MR. GRAVUNDER: Clarification on
9 where the location of the septic system is.

10 So we're pointing at a picture, and
11 he was saying, "Right there," but the transcript
12 is going to say, "It's right there," it's not
13 going to tell us --

14 MR. ANTHONY: Would the description,
15 estimates from property line --

16 MR. GRAVUNDER: Or the general
17 description of where it is approximate to the
18 various property lines and buildings.

19 MR. ANTHONY: Mr. and Mrs. Morris,
20 can one of you give us a more detailed description
21 where the septic field is using this map, and
22 trying to transcribe it in a way it can be
23 described.

24 MR. MORRIS: So are we assuming this
25 is north? I don't know how to -- I don't know how

1 to describe that.

2 MR. FERGUSON: Yes, that's north.

3 MR. MORRIS: So from the north,
4 it's probably 30 feet over is where it starts.
5 That's the edge of it. And from here, I would
6 assume --

7 MR. ANTHONY: From the West?

8 MR. MORRIS: Yeah, from -- sorry.

9 MR. JONES: That's okay.

10 MR. MORRIS: From the West, as an
11 estimation, I'm saying probably 30 feet, because
12 it kind of goes -- it kind of goes -- it wraps
13 around, but it doesn't get way down here, because
14 this is all low-lying area right here.

15 MR. ANTHONY: Is the tank directly
16 off the corner of the house towards the west side
17 of the property?

18 MR. JONES: The septic tank.

19 MR. MORRIS: The tank is also --
20 it's about six feet in from the corner of the
21 house and runs west, and then the line out of the
22 tank heads north.

23 MR. ANTHONY: That's sufficient.

24 MR. JONES: How do you know
25 approximately where that leach field is?

1 MR. MORRIS: That's what I was told,
2 that's where the grass grows, because it was kind
3 of all chewed up there at one point, and so that
4 gravel is all just grass.

5 MR. JONES: Thank you.

6 MR. ANTHONY: Is that sufficient?

7 MR. GRAVUNDER: Yes.

8 MR. ANTHONY: Thank you.

9 MR. MORRIS: Is that okay?

10 MR. ANTHONY: Any more
11 clarifications before we close public discussion?
12 I don't want to close it if you have anything else
13 you want to bring up.

14 MR. MORRIS: I don't think so.

15 MS. KOLBE: Let me actually ask one.
16 We heard Mr. Everett's time line of when they
17 moved in, and he thinks approximately, build might
18 have started around January.

19 Does that sound somewhat accurate to
20 you, that they might have moved in in February and
21 building might have started in January? We can
22 have your wife answer that.

23 MR. MORRIS: No, that's -- that's
24 fairly accurate.

25 The only thing, I didn't know when

1 Mr. Everett closed right away. I mean, I should
2 have, but I didn't.

3 MS. KOLBE: His recollection of the
4 time line of facts and his cousin --

5 MR. MORRIS: Right, because we had
6 contracted -- like I said, we had contracted, and
7 like I said, the building -- because of weather,
8 it kept getting pushed back and pushed back, and
9 that's why I finally started in January.

10 MS. KOLBE: Were you aware of the
11 contract with his cousin that he -- your
12 cousin -- had planned to sell the house before --

13 MR. MORRIS: I knew he planned on
14 selling it at some point, yes, because we bid on
15 it. He offered it to us, also.

16 MS. KOLBE: You were aware something
17 was coming?

18 MR. MORRIS: I knew they were
19 offering to sell it, but they have a lot of land,
20 and I didn't know when, how. Is that it?

21 MS. KOLBE: Yes.

22 MR. ANTHONY: And Mrs. Morris back
23 up, you were -- seemed like you want to say
24 something.

25 MS. MORRIS: Yeah, I wanted to say,

1 yeah, we were talking about buying the property,
2 too. And that was around August when that was
3 happening, and we didn't know when. We knew it
4 was going to them, but we didn't know when it came
5 to fruition. And so we did start building
6 before -- once we found out, "Yes, we're going to
7 spend the money," that's when we told them we were
8 building a barn back there.

9 MS. KOLBE: Thank you.

10 MR. ANTHONY: Last call for
11 clarification questions?

12 MR. JONES: Not me.

13 MR. FERGUSON: Huh-uh.

14 MR. ANTHONY: I'm going to close
15 public discussion, 6:44.

16 All right. Now it's time for the
17 open discussion amongst the board exclusively. We
18 also could dip into Executive Session if we deem
19 the need to of necessity.

20 I know we chatted a lot about the
21 driveway, about access point and the gravel and
22 the modification of the property, but the true
23 issue is the barn and the setback of the property
24 line.

25 So there's -- it trickles down and

1 has relevance, but the true issue is not the
2 driveway. The driveway is as a result of the barn
3 being against code, against the BZA, and also
4 built without any other processes followed.

5 MS. KOLBE: I wanted to ask Alan,
6 because I have the measurements. I don't think --
7 I don't think it really matters, per se, but I
8 just wanted to -- the -- we have the 10-foot
9 interior setback, but do we have any other
10 measurements? It looks like approximately 10 from
11 that corner, but does it meet any of the other
12 setback requirements from any of the other
13 distance?

14 Does it meet the 40 from any
15 distance from any part of the property?

16 MR. STOCK: The answer would be no.

17 MS. KOLBE: Okay.

18 MR. JONES: And this is also that
19 10-foot change that went in a few months ago and
20 got bumped to 40.

21 MR. STOCK: Several months ago.

22 MR. JONES: Yes.

23 MR. STOCK: Several months ago -- in
24 fact, it was the end of last year.

25 MS. KOLBE: Can I confirm, Alan, at

1 no point did you receive a phone call inquiring
2 about what the setbacks were, or anything like
3 that?

4 MR. STOCK: Correct. In conferring
5 with Misty, our assistant, until after-the-fact.

6 MS. KOLBE: Okay. I felt very
7 frustrated when I heard all the challenges that --
8 I love, really, Mr. Everett was being -- but I
9 felt very frustrated by all the challenges that
10 were being passed to a neighbor because of a
11 failure to follow the zoning ordinance, because
12 that's why we have a zoning ordinance, because,
13 you know, that's part of why we have it, you know,
14 to not pass on undue challenges to anyone, because
15 that's why we have a setback. The setback is to
16 have distances from our neighbors to allow our
17 neighbors to also use their properties as they see
18 fit.

19 And so I was frustrated during that
20 very neighborly statement by Mr. Everett, because
21 there has been challenges passed down to him
22 because of the failure to follow the ordinance.
23 So that's, unfortunately, frustrating.

24 MR. JONES: If he had it set back to
25 40 feet from the driveway, and then the 40 feet

1 off the back property line, his access to gravel
2 wouldn't count as anything permanent. He could
3 cut a new driveway on his own property?

4 MR. STOCK: You're asking multiple
5 questions, so if I don't answer you, it's not
6 because I'm not trying to.

7 MR. JONES: Gotcha.

8 MR. STOCK: You have to pull a
9 driveway permit from the person who maintains the
10 road or the entity.

11 This is Route 68. That would be
12 ODOT District 8. They would do this.

13 There's already a driveway here.

14 MR. JONES: Right.

15 MR. STOCK: So you do not need to
16 ask permission for a driveway, because a driveway
17 connects to a roadway, which the responsibility is
18 the maintenance.

19 MR. JONES: This really isn't that
20 important, because we're talking setbacks, but --

21 MR. STOCK: Yes. A driveway can be
22 placed right on the property line as long as you
23 know where the property line is.

24 So a driveway, hypothetically, is
25 this right -- well, actually, it's from the

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1 roadway to the existing one.

2 Once you're on the interior, they do
3 not have to ask permission to run impervious
4 material.

5 MR. JONES: Okay.

6 MR. STOCK: If it's pervious
7 material -- if it's asphalt or cement, then they
8 do, because it goes into the calculation.

9 MR. JONES: That's what I figured
10 for the property tax and stuff.

11 MR. STOCK: So from here to here,
12 and again, we can do it from right there. I do
13 have those measurements.

14 MR. JONES: Oh, it's not that
15 important. I just wondered if just the driveway
16 thing, the setback, I know, is the whole thing,
17 but the driveway thing plays into it, too.

18 MR. STOCK: If you're looking -- so
19 if you go from here to here, that's 33 feet. So,
20 again, just a little past here would be back
21 there.

22 MR. JONES: Uh-huh.

23 MR. STOCK: Was that the second part
24 of your question?

25 MR. JONES: That was pretty

1 much -- you pretty well got it. I pretty well
2 understood, but I wanted to hear you say it to
3 clarify it.

4 MS. KOLBE: What I'm visualizing --
5 and I'm not great at spatial relations -- is based
6 where I'm understanding the leach field to be, I
7 don't see a place on this property where you can
8 fit a 1,500-square-foot building with a 40-foot
9 setback. I haven't drawn that, but -- or maybe.

10 MR. ANTHONY: Without variance.

11 MS. KOLBE: No, I'm saying --

12 MR. ANTHONY: Without variance.

13 MS. KOLBE: I don't see a --

14 MR. JONES: What about that side
15 yard to the north?

16 MS. KOLBE: You need a variance to
17 put it in the front yard.

18 MR. JONES: Right, because of the
19 front of the house?

20 MS. KOLBE: Yeah, because that was
21 my thought, actually. That's the biggest place
22 not a leach field.

23 MR. JONES: It drops off pretty
24 quick, too, along that line of the house.

25 MS. KOLBE: You buy some land from

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1 your neighbor, you know. I don't know. There
2 just doesn't seem to be space in that little
3 corner where that was built to have built a
4 structure of that size and have appropriate
5 setbacks.

6 MR. ANTHONY: But that's when you
7 don't build it or you go through the process to
8 get something built within the approved code or
9 you get a variance before you build it.

10 MS. KOLBE: That's why I -- and
11 although I heard what they said in terms of they
12 already had paid for the concrete, it's a lot
13 harder to get concrete up than it is to put
14 concrete down. So ...

15 MR. ANTHONY: So here is how it's
16 going to work: Upon approval, nothing necessarily
17 has to be done. Probably discussion should be
18 made about some sort of easement and how it's
19 going to be enforced. Denial would be something
20 different and, unfortunately, it's not on us, but
21 we probably should talk through what that means.

22 In fact, to do that, I would like to
23 call an Executive Session, and I need a second to
24 do that.

25 MR. JONES: I'll second.

1 MR. ANTHONY: Call an Executive
2 Session at 6:52.

3 MR. GRAVUNDER: State the purpose.

4 MR. ANTHONY: For clarification
5 of -- for clarification of results of a denial of
6 variance requests.

7 MR. STOCK: To speak with your
8 lawyer?

9 MR. ANTHONY: To speak with my
10 lawyer.

11 MS. KOLBE: You're the only lawyer
12 we have.

13 MR. STOCK: Goes into Executive
14 Session.

15 MR. ANTHONY: The board members,
16 Mr. Stock -- and should the court reporter come,
17 as well, or should not?

18 MR. STOCK: No, should not. And
19 what time.

20 MR. ANTHONY: 6:53.

21 MR. STOCK: We are momentarily
22 suspending.

23 (Executive session from 6:53 p.m. to
24 7:17.)

25 MR. ANTHONY: We are now out of

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1 Executive Session at 7:17.

2 For those in the audience, we did
3 seek legal counsel during Executive Session for
4 persons understanding legal ramifications of any
5 results tonight.

6 Now to return to board discussion
7 regarding the variance consideration, and before
8 we do that, let me do something else here.

9 I do want to read into the record
10 the Duncan criteria. It was in the packet,
11 Exhibit C, so bear with me here, test my reading
12 ability.

13 Question Number 1: Whether the
14 property in question will yield a reasonable
15 return, or whether there can be a beneficial use
16 of the property without the variance.

17 The Applicant's answer was: The
18 variance will allow storage building for
19 preservation of owners' classic cars. The
20 protection could not be achieved without a
21 structure, which will not fit on the property
22 anywhere else. Moving the building would cause it
23 to interfere with septic/leach field.

24 The Township response to that was:
25 The Petitioner has established a reasonable

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1 return, can be realized without the variance.

2 Question Number 2: Whether the
3 variance is substantial.

4 Applicant's answer: I don't feel
5 that the variance or setback is a substantial
6 alteration in the zoning rules.

7 Township response: The variance
8 would be a substantial change to the zoning
9 resolution of a 40-foot setback side and rear.

10 Question Number 3: Whether the
11 essential character of the neighborhood would be
12 substantially altered or whether a joint property
13 would suffer a substantial detriment as a result
14 of the variance.

15 Applicant's answer: This building
16 replaces the old wooden shed that was falling down
17 due to age and a shifted foundation. So I believe
18 this would be significant improvement on property
19 value.

20 Township response: The Petitioners
21 did not consult with the Township regarding
22 requirements, nor did they apply for a zoning
23 permit. They did not consult with the neighbor or
24 seek permission to use the neighbors' driveway or
25 access to build or use the barn afterwards.

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1 Question Number 4: Whether the
2 variance would adversely affect the delivery of
3 the government goods.

4 Applicants' response: I don't
5 believe this will have any effect on the delivery
6 of government goods.

7 The Township response: The
8 Petitioners' statement is accurate.

9 Question Number 5: Whether the
10 property owner purchased the property with
11 knowledge of the zoning requirements.

12 Applicant's answer: I was not aware
13 of the setback of forwarding from interior
14 property lines. My research had shown 10-foot
15 setbacks for auxiliary buildings, because I didn't
16 realize a difference in AI agriculture rules.

17 Township response: The Petitioners
18 did not contact the Township for guidelines.
19 Ten-foot setbacks are not consistent in any
20 district for accessory structures -- sorry,
21 10-foot setbacks are not consistent in any
22 district for accessory structures -- I'm sorry,
23 are not consistent in any district for accessory
24 structures. Ten-foot is only a potential side
25 yard setback for a residential home in an R-1

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1 district.

2 Question Number 6: whether the
3 property owners' predicament can feasibly be
4 obviated through some other method than a
5 variance.

6 Applicant's response: The variance
7 would be the only feasible way to allow a storage
8 barn to fit on the property.

9 Township response: Petitioners
10 action of building without a zoning or building
11 permit has nullified other input for options.

12 Question Number 7: whether the
13 spirit and intent behind the zoning requirement
14 would be observed and substantial justice done by
15 granting the variance.

16 Applicant response: I believe the
17 property is improved with this variance being
18 issued, and no encroachment or detriment on
19 neighboring properties.

20 Township response: The Petitioners'
21 answers to the lack of understanding and
22 encroachment -- of encroachment to a neighbor's
23 property for either the structure's location and
24 the granting of a ramp on the neighbor's property,
25 further undermining neighborly cooperation by

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1 assuming permanent use of the driveway, and
2 placement of aggregate without first asking.

3 That was a seven-question Duncan
4 standard.

5 The second thing I want to read into
6 the record is 600.8.5, this is another resolution
7 with four other questions.

8 Question Number 1: Conditions and
9 Circumstances. What special conditions and
10 circumstances exist which are particular to the
11 land, structure, or building involved, and which
12 are not applicable to other lands, structures, or
13 buildings in the same district?

14 Applicant's answer: The shape of
15 the lot and location of the septic is a problem
16 unique to this property.

17 Township response: The septic
18 system location has not been provided.

19 Question Number 2: Property Rights.
20 What literal interpretation of the provisions of
21 the zoning districts would deprive the applicant
22 of property rights commonly enjoyed by other
23 properties in the same district under the terms?

24 Applicant's answer: As stated
25 before, in trying to honor the setback of 40 feet

1 wouldn't allow building anywhere on the property
2 as it is.

3 Township response: Building and
4 accessory structure is not a right of ownership.

5 Question Number 3: No special
6 privilege. Why would granting this variance
7 requested not confer to the applicant any special
8 use or privilege denied by the resolution of other
9 lands, structures, or buildings in the same
10 district?

11 Applicant's answer: This simply
12 allows for indoor storage of my possessions, while
13 not granting any special uses or extreme
14 circumstances.

15 Township response: Building without
16 permits encroaching on property line, adding fill
17 on neighbors' property, and increased setback by
18 30 feet is a special privilege.

19 And, lastly, Number 4: Harmony with
20 locality. Why would the variance requested not
21 alter the essential character of the legality?

22 Applicant's answer: This would be a
23 structure not unlike many surrounding properties
24 already had (grandfathered) from the previous
25 zoning rules.

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1 Township response: Any improvements
2 or structures must be approved by current zoning
3 standards, not past practices.

4 Thank you for bearing with me. I
5 needed to read that into the record for purposes
6 of our next step.

7 And now to move on to board
8 discussion regarding any potential motion
9 regarding this variance.

10 MS. KOLBE: I think we're really
11 guided by the Duncan criteria. We're really
12 guided by our resolution, and I appreciate you
13 reading those into the record. And I think,
14 unfortunately, that makes it really clear -- to
15 me, at least -- that this is a significant
16 variance. It significantly goes beyond our
17 resolution and has significant issues in its
18 encroachment on neighboring property, on being not
19 just a little beyond the required setback as we've
20 had you know in other cases, but 30 feet. I mean,
21 we're talking triple -- or excuse me --
22 one-quarter of what's being asked in all
23 directions, and granting, you know -- in a
24 situation, unfortunately, where no guidance was
25 asked on the process, so we weren't able to, you

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1 know, kind of say, "Okay. Maybe build a smaller
2 structure so we could get further from the edge of
3 the property." And so we're kind of put in this
4 tough spot of: we can't put this large structure
5 40 feet from the edges of the property, and it's
6 already interfering with Mr. Everett's ability to
7 use his property as he sees fit.

8 MR. ANTHONY: Question Number 3
9 falls in line here in regard to what you're
10 saying. Applicant did answer whether there would
11 be improvement on the property, but whether
12 adjoining properties would suffer a substantial
13 detriment, and it's post -- post being shown even
14 on the map that it would immediately alter plans
15 for the neighbor, and there's no discussion at all
16 as a direct detriment on the neighbor.

17 I think the other thing would be
18 property rights on the 600.8.5. You can build a
19 barn on your property. There's rules to do it.
20 And not knowing the setbacks or researching and
21 not being accurate doesn't absolve the property
22 from needing the variance in the first place.

23 MS. KOLBE: Yeah. I think we
24 commonly see people, you know, kind of respond to
25 these Duncan criteria with, kind of, this idea of:

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1 It's going to improve the property values of my
2 property, or make my property look better. But
3 that's actually not really what we're looking for.
4 We're looking for, you know -- in a variance,
5 we're not saying, you know, "Does your property
6 look better," or "people looking at your property
7 better," we're looking at, you know, "Are you
8 fitting within the zoning resolution?" And if
9 not, "What is there special about your property
10 that makes you unable to follow the rules?"

11 And I don't really see anything
12 about this property that makes it different that
13 wouldn't have allowed them to follow the rules if
14 they had asked for guidance earlier. Maybe it
15 might have meant a smaller shed, maybe it might
16 have meant something different. But I don't see
17 something that wouldn't have maybe allowed them to
18 follow rules. Maybe it might have meant that they
19 couldn't fit an accessory building on their
20 structure, but I don't see anything particular
21 about this property that fits that criteria.

22 MR. ANTHONY: Any more thoughts,
23 Darin or Virgil?

24 MR. JONES: He said they started
25 this in November of last year.

1 If he had the application then, came
2 in for the permit, it would have been the 10-foot
3 thing.

4 And I agree that that's not the way
5 it was done, and it was not right. But if he had
6 done it the way he was supposed to in November, he
7 would have come in and asked for a variance, the
8 same thing as he already done; the problem is, he
9 went against the rule and did it without checking.

10 Yeah. That's all I have to say.

11 MR. FERGUSON: Pretty close to the
12 neighbors' property, too, the way it sets. It
13 could have been turned a little and changed, might
14 make a difference, but they didn't, so we have to
15 put up with what we got.

16 MR. JONES: And the neighbors said
17 that the easement probably won't be a problem,
18 doesn't seem to be a problem for access. But
19 that's not the problem, it's the 10-foot off the
20 line. That's the problem.

21 MR. ANTHONY: Yeah, whether the barn
22 is built or not, the problem is where the barn
23 should be.

24 MR. JONES: Correct.

25 MR. ANTHONY: And the substantial

1 nature of it, and maybe to his point, had the
2 process been followed, maybe a less-substantial
3 variance could have been requested with input from
4 Alan, from us.

5 MS. KOBLE: Honestly, like
6 even -- he is lucky he has got a really cool
7 neighbor who is willing to kind of work with him
8 on this. But like even that, like you go to your
9 neighbor first before there's a problem, you know,
10 and say, "Hey, I'm going to need some access,"
11 because it's real hard to say no to your neighbor
12 you live next to who already has an access
13 problem. So, you know, it's hard to say whether
14 there's neighborly relations, is this something
15 Mr. Everett would want to do. I wouldn't even
16 want someone to have something built on my
17 property, but if they lived next door, I might say
18 yes to not, you know, have a dispute to my
19 neighbors, which is what neighbors do.

20 MR. ANTHONY: Which is why it's 40
21 feet.

22 MS. KOLBE: Yeah, that's why you ask
23 first if you notice someone lives next door to you
24 to be nice, yes.

25 MR. ANTHONY: Daron, just one

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1 thought, too. I know what you're saying. Had
2 the -- had it been applied for the proper way in
3 November --

4 MS. KOLBE: It changed before
5 November.

6 MR. JONES: No, the end of the year.

7 MR. ANTHONY: But, either way, had
8 the process been followed, the discussion with
9 Alan would have been had.

10 MR. JONES: Correct.

11 MR. ANTHONY: He was even privy to
12 what the Zoning Commission was in the works of
13 doing, and he would have given deadlines, "Hey,
14 listen, it needs to be done soon," in other words,
15 it's going to be done January 1 -- it didn't
16 happen. I understand, like, the talks of the
17 contract was signed, but the process wasn't
18 followed, and had it been followed, discussion
19 would have happened.

20 MR. JONES: Right.

21 MR. ANTHONY: The ifs, ands and buts
22 are almost --

23 MR. JONES: Exactly.

24 MR. ANTHONY: Any more things to
25 consider before a potential motion?

1 I'm willing to take a shot at a
2 motion. Anyone have thoughts about a motion?

3 MS. KOLBE: Response should be
4 affirmative.

5 MR. ANTHONY: No matter what the
6 response is, should be in the affirmative, "yes"
7 in favor of or "nay" in denial of.

8 MS. KOLBE: Then I will try a
9 motion.

10 MR. GRAVUNDER: The motion is in the
11 affirmative, so the motion would be granting the
12 variance.

13 MS. KOLBE: Or denying.

14 MR. ANTHONY: So the motion is
15 made -- I was wrong, rewind.

16 The motion is made in the
17 affirmative, and the vote for or against.

18 MS. KOLBE: I've got it. I remember
19 now.

20 So then I make a motion to approve
21 the variance as written based on the Duncan
22 criteria and Resolution 600.8.5; is that right?

23 MR. STOCK: I'm not sure what
24 you've --

25 MS. KOLBE: Motion to approve it.

1 MR. ANTHONY: Let's take a pause
2 here. Can we ask a question of Brian? So we've
3 read it into the record --

4 MS. KOLBE: Read it into the record.
5 Is that enough?

6 MR. GRAVUNDER: So I would read
7 the -- make note of the specific variance
8 requested by Mr. and Mrs. Morris.

9 MS. KOLBE: Okay. Let's still -- I
10 did that right.

11 MR. GRAVUNDER; still; in the
12 affirmative.

13 MS. KOLBE: I motion to approve,
14 based on the Duncan criteria and Resolution
15 600.8.5, based on substantial variance of greater
16 than 30 feet, substantial detriment to the
17 character and adjoining properties, that return
18 could be realized without the variance.

19 MR. GRAVUNDR: The variance is on
20 his application for notice for the appeal, the
21 variance to allow reduced footage setback for
22 accessory structure that is erected on the
23 property.

24 MR. GRAVUNDER: I don't think you
25 need to specify in your motion -- you only need

1 the conditions, your motion to approve the
2 conditions or not.

3 MS. KOLBE: So I just say --

4 MR. ANTHONY: I think what he is
5 saying, you need to specify what the variance was,
6 which was written here on Page 2 of Exhibit A, and
7 you don't need to specify --

8 MS. KOLBE: Which of the
9 criteria -- okay.

10 MR. ANTHONY: You can explain on a
11 board vote if you wanted to.

12 MS. KOLBE: Okay. Take 3. Motion
13 to approve variance to allow reduced footage of a
14 setback for accessory structure that was erected
15 on the property.

16 MR. GRAVUNDER: Which property?

17 MS. KOLBE: 1611 U.S. 68 South Xenia
18 45385 -- parcel number?

19 MR. GRAVUNDER: If you would like.

20 MS. KOLBE: M36-000200361003700.

21 MR. ANTHONY: Heard your motion. Do
22 I have a second on the motion?

23 MR. JONES: I'll second.

24 MR. ANTHONY: Mr. Stock, would you
25 call the vote, and if you want to give explanation

1 the way you vote, you're welcome to.

2 MR. STOCK: Ms. Kolbe.

3 MS. KOLBE: Nay, due to substantial
4 deviations from the Duncan criteria and Resolution
5 600.8.5.

6 MR. STOCK: Mr. Jones?

7 MR. JONES: Yes.

8 MR. STOCK: Mr. Ferguson?

9 MR. FERGUSON: Yes.

10 MR. STOCK: Mr. Anthony?

11 MR. ANTHONY: No. Can I ask what
12 happens now?

13 MR. STOCK: In the event of a tie,
14 the Petitioner did not prove their case. If it is
15 50/50, it has to be -- it has to be in the simple
16 majority. If there's a tie, again, it is denied,
17 because there was not a simple majority.

18 MR. ANTHONY: Motion is denied on a
19 vote 2/2, and I would call a meeting adjournment,
20 7:38.

21 MR. STOCK: And we are no longer
22 recording.

23 (Concluded at 7:38 p.m.)

24 - - -

25 C E R T I F I C A T E

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1
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11 That I am not an attorney for nor am I
12 related to any of the parties to this action;

13 That I am not interested in the outcome
14 of this case.

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