

XENIA TOWNSHIP BOARD OF ZONING APPEALS
PUBLIC HEARING

May 20,2020

THESE MINUTES ARE A SUMMARY OF THE EVENTS OF THE PUBLIC HEARING AND ARE NOT A WORD FOR WORD ACCOUNT OF THE DISCUSSIONS WHICH TOOK PLACE.

We are holding this Board of Zoning Appeals meeting under the guidelines from Governor Mike DeWine and Ohio Attorney General Dave Yost, reducing exposure to the COVID-19 virus. Board of Zoning Appeals must meet quorum but may do so by face to face or teleconferencing, or a combination thereof IF the public has opportunity to share in the meeting in the same manner. Xenia Township has complied with this teleconferencing method. This meeting is being recorded.

Ed Jacobson, Chairman, called the meeting to order at 7:00 p.m. and welcomed the people in attendance. He asked for roll call for attendance of the members.

Board of Zoning Appeals members present: Ed Jacobson, Chair; Doug Cope, Darren Jones, Janis James. Ken Penewit was absent. Also present was Alan Stock, Xenia Township Zoning Inspector and Anu Sharma, Greene County Prosecutor's Office, legal counsel for the Township.

Mr. Jacobson went over the rules of the meeting; he asked all attendees to suppress any background noise in their location as it would be heard by all. The application will be read by Alan Stock, Zoning Inspector/Clerk, because the Board of Zoning Appeals decisions are quasi-judicial, all testimony must be sworn when speaking. Everyone must state their name and state they are under oath. Only facts are to be given, not opinions or emotions. Minutes are being taken recorded. Questions are to be directed to the Board only. The Board of Zoning Appeals will follow Roberts Rules of Order for procedures. The Chair reserves the right to limit public input. The Board of Zoning Appeals may approve in whole or in part, reject in whole or in part, or reschedule to another date. An applicant may also withdraw their request. The decision will become effective five days after date of decision. A decision by this Board is a final order under R.C. 2506.04, aggrieved individuals may appeal the decision to Common Pleas Court. The audience joined the Board in the Pledge of Allegiance. Mr. Jacobson administered the oath to the conference attendees.

Mr. Jacobson asked Mr. Stock if the application was lawful to be heard by the Board. Mr. Stock advised that the notice had been published in the newspaper and notices had been mailed to all property owners within 500' of the property. Mr. Stock stated that a sign was placed on the applicants' property. Mr. Stock explained all the exhibits for this Public Hearing. Mr. Jacobson asked the Board members if they had read and considered the application—all answered yes; and he asked if they felt they should not be part of the proceeding due to some conflict of interest—all answered no; and if they intend to participate in the entire procedure including voting on the questions asked—all answered yes.

Mr. Jacobson asked Mr. Stock to present the proposal.

1874 Hilltop Road, Xenia, Ohio 45385 – Request for Area Variance Section 400.7 Excess of 15% Lot Coverage

Kristal Hargrove, 1874 Hilltop Road, Xenia, Ohio stated that they have always wanted to live in the country, that they have always loved the home that they now reside in. she stated that she loved how close they are to town and family without having close neighbors. She stated that both she and her husband love cars and would like to have all their cars under one roof. She stated that she never thought that this would be an issue, and that they should have checked into zoning regulations sooner. She stated that they have been saving money and now they are financially able to build the barn. She stated again that she never thought that it would be an issue and that they want and need a barn to house their cars.

Mr. Jacobson said thank you, and that they have a nice property.

Mrs. Hargrove replied “Thank You, we take pride in where we live”

Mr. Jacobson asked about their response to the Duncan Criteria question one, that they not only wanted to use the barn for hobbies, but also for business.

Mrs. Hargrove stated that she would like to correct that. They have a full-time service with Penske of Dayton. All the vehicles are serviced by them and that no service will be done out of the barn. The Hargrove’s business is in Spring Valley and all the vehicles stay parked there.

Mr. Jacobson asked again that no business was intended to be conducted inside the barn

Mrs. Hargrove stated that the barn would not be used for business. It would be used for their car collection and may conduct work on their personal vehicles. Nothing to do with the business would be conducted there, no semis or trucks.

Mr. Jacobson asked about statements made by neighbors about there not being a cover or fence on the pool

Mrs. Hargrove stated that when the pool was put in by Knickerbocker, they stated that a fence was not needed and then she had not thought it would be an issue. She stated that she had discovered that they can also install a hard-retractable cover instead of a fence. She asked if that was correct.

Mr. Jacobson asked Mr. Stock if that was correct.

Mr. Stock stated that was correct.

Mrs. Hargrove stated that she had called Knickerbocker and that they are 100 pools behind for the season, and that they could not install a retractable cover until next season. She then went into details involved in installing a retractable cover.

Mr. Jacobson stated that he understood that Mr. Stock had approached the Hargrove's several times regarding the fence issue and that you indicated that there was a cover on it.

Mrs. Hargrove stated that they did have a cover that is put on with springs. She stated that it could hold an elephant, that you are able to run across it. She stated that she was told that the cover had to be a retractable hard one that is put on every time the pool is not in use or a fence. She stated that they are going to go with the hard-retractable cover. She also stated that she was able to place the cover she has now every night, but it could become tricky with the springs.

Mr. Jacobson stated that the cover they are using now appears to be a winter cover. To meet Zoning standards, when the pool is unattended without a fence, the cover would have to be placed on the pool. He asked Mr. Stock if this was a correct statement.

Mr. Stock replied that is the intent for safety measures.

Mrs. Hargrove stated that they do have a cover but was told it had to be retractable or a fence. She stated that she was not aware that they could use the cover that they use every day.

Mr. Jacobson stated that the cover that the Hargrove's have now appears to be a winter cover and is designed to keep debris out and is not designed to walk on.

Mrs. Hargrove stated that you can walk across the cover she has now and not fall through it.

Mr. Stock stated that the Zoning Resolution clearly states that there are two choices: Retractable cover or fence.

Damon Hargrove, 1874 Hilltop Road, Xenia, Ohio asked why ponds do not have to have fences around them for safety. He also stated that ponds are just as big of a liability as a pool.

Mr. Stock stated that ponds are covered under Ohio Department of Natural Resources and that they do not have local zoning ordinances that says they must have a fence around ponds. Mr. Stock stated to the Hargrove's that they live in Xenia Township and it has been clearly stated that a fence or retractable cover is necessary from Xenia Township. Mr. Stock also stated that he cannot speak for Ohio Department of Natural Resources but is not relevant to tonight's discussion.

Mr. Jacobson stated that the issue at hand was that Zoning permits 15% lot coverage and the Hargrove's are currently at 23.4% and asking to further extend that by 2800 square feet or another 6% for a total of 29.5% lot coverage. Mr. Jacobson stated that as Zoning Appeals Board

they are trying to justify approving the variance which would essentially double the current coverage allotment.

Mr. Jacobson opened the meeting to the Board.

Ms. James; Board of Zoning Appeals member stated that while looking at the plans for the dry well it looks as to solve the problem for now. She stated that from her understanding, they can wear out and need repairs and must be maintained. Ms. James stated that we not only need to look at today, but also look at the effect this will have 20, 30, 40 years down the road. Will the next people that live there be able to maintain the dry well? She stated that she does not think that almost doubling the lot coverage is a good idea.

Mrs. Hargrove stated that she did not know what would happen in 30-40 years. She also stated that their property has never had standing water anywhere. Mrs. Hargrove stated that they would maintain the wells as long as they are there, but she did not know what would happen in 30-40 years but she was pretty sure the property would still have the same drainage as it does now and that the property has always had. She stated that the basement has never flooded.

Mr. Jacobson asked if there was a sump pump in the basement.

Mrs. Hargrove answered that they do not have a sump pump. She also stated that the home is a tri-level home, and it has never had water in it from rain.

Mr. Jacobson asked how deep the pool was.

Mrs. Hargrove responded that the pool is 2-3-4 ½ feet deep.

Mr. Jacobson asked if there were any water issues when they dug the pool.

Mrs. Hargrove answered that there were not any water issues when the pool was dug. She also stated that it had rained while it was being dug and the hole drained itself without the need of a pump.

Mr. Jacobson asked if they knew what their water table was.

Mrs. Hargrove answered that she did not know.

Mr. Hargrove replied that the well is 52 feet deep.

Mr. Jacobson stated that he asked because many properties in the area must have sump pumps for basement because the water table is not deep in many areas.

Mrs. Hargrove answered that they do not have a sump pump and that they have not had flooding from rain.

Mr. Jacobson asked Ms. James if her question had been answered.

Ms. James stated that her question was about the doubling of lot coverage. She stated that there is a reason it is set at 15% and that she is aware that every property behaves to water in different ways. She went on to say that the almost doubling of lot coverage causes her concern and the ongoing maintenance required for the dry well. Ms. James went on to say that she is a little bothered by the fence not being around the pool, but the drainage is her main concern.

Mr. Jacobson asked Mr. Cope if he had any questions.

Mr. Cope; Board of Zoning Appeals Member said that looking at the United States Geological Survey Topography Map, it appears that there is a 60-foot drop from the Hargrove's property to the riverbed of the Little Miami River as a natural drainage. Mr. Cope stated that he was not concerned by the water drainage, he feels that the water would continue to drain naturally. He stated that he was more concerned with the increased number of vehicles in a well field protection area.

Mr. Cope then addressed Mr. Stock. Mr. Cope stated that he understood the intent of lot coverage and specifically how the intent to address the amount of surface that is covered with objects that prohibit water from naturally going into the waterbed and causing run off. He then read the definition of lot coverage according to the Zoning Resolution: The part or percentage of lot occupied by buildings including accessory buildings. He then stated that according to the zoning resolution, only the buildings and not the pool or driveway should have been taken into consideration on the lot coverage amounts.

Mr. Stock replied that the purpose behind this is impervious versus pervious materials. He went on to state that the Zoning Commission is in the process of making the change to the definition to include all impervious materials.

Mr. Cope stated that we have a definition that we must live by until it is changed.

After doing calculations, Mr. Stock stated that if the only the home and outbuildings were factored, the amount would be under 15%.

Mr. Cope said that if the pool and driveway were eliminated per definition, the percentage would be lower.

Mr. Jacobson agreed with the numbers and went on to state that if this was the case, that the Hargrove's appear to not require a variance.

Mr. Cope stated that based on the definition, that is what should be followed. He went on to say that he knew the change was coming and that he supported the change, but that the Board

was bound to follow the current definition which only included building into the calculations. Mr. Cope again stated that he supports that change to include all impervious materials for the purpose of figuring out run off would be affected. He went on to ask if there was an issue to consider by the Board.

Mr. Jacobson stated that they are looking at how water is going to percolate into the ground and logically you would know that water will not percolate through driveways, pools and so forth, but by the current definition only homes and out building are included. Mr. Jacobson went on to say that if we follow the current zoning definition, the issue does not appear to need to come to the Board because the lot coverage is under 15%, on the other hand if it did include all impervious material then there is an issue before the Board.

Mr. Stock asked Mr. Cope if he had the definition of lot coverage near.

Mr. Cope replied that it was Section 200 Article 2, he again read the definition

Mr. Stock stated that is what's written, but what is practiced is all impervious materials. He went on to reiterate that the definition will be changed to include all impervious materials.

Mrs. Hargrove asked if they were going to follow what is written or what will be written.

Mr. Jacobson stated that the Board needed to know what they were dealing with. He asked are they exceeding the limit or not, if not, there is not a Board issue. He then asked Ms. Sharma; Greene County Assistant Prosecutor and Board of Zoning Appeals Counsel her opinion.

Ms. Sharma stated that what is written is what is written, and what's practiced could be problematic. She further said that she would have to do more research on the matter.

Mr. Jacobson stated that if they are to go with what is written, there is not a need for a variance or for the Board of Zoning Appeals to make a ruling. He further said that if they are to go with what is practiced, then the Board of Zoning Appeals did have an issue to rule on.

Ms. James asked if there are examples of the practice of using all impervious materials that could be shown as reference.

Mr. Stock stated that Zoning is interpreted by the Zoning Inspector. The design was to be impervious versus pervious materials and storm water runoff. He further stated that within the last 3-4 years, the calculations of lot coverage had included all impervious materials. Mr. Stock went on to say that this practice is not only on the Hargrove's, that the same practice has been used for every building, deck, sidewalk, outbuilding for the last 3-4 years.

Mr. Hargrove stated that the Board should go by what is written in black and white, not an opinion.

Ms. James stated that you can not pick and choose what is written in black and white to follow, that pools also have written black and white.

Mr. Hargrove stated that there are ponds in Greene County that are dug and have waterfalls, but do not have fences. He stated that his pool had nothing to do with this issue.

Mrs. Hargrove stated that they just wanted to build a barn on their property. She said that the house was built in 1969 and she does not think that there have ever been water problems since the house was built. She said that she did not know what would happen 30,40,50 years down the road, no one does. She asked if the Board will be following what is written in the Zoning Resolution or what has been practiced for the last couple years. She stated that the barn would not affect anyone, and that it would be prettier than the house.

Mr. Jacobson asked Mr. Jones if he had any comments or questions.

Mr. Jones; Board of Zoning Appeals Member stated that he agreed with Mr. Cope and should practice what is written. He further stated that he doesn't know why this has not come up before. He reiterated that the coverage should be home and buildings, the way the resolution reads, not what has been practiced.

Mr. Jacobson asked Ms. Sharma; Board of Zoning Appeals Council and Mr. Stock if there is an issue for the Board of Zoning Appeals or not.

Ms. Sharma replied that she would need to do more research on this issue. She asked if the Board would be able to recess.

Mr. Jacobson replied that the meeting could be continued. He further stated that if it was determined that what is written is to be used, that it was not a Board of Zoning Appeals issue, and the Board would not need to reconvene.

Mrs. Hargrove asked how long the delay would be.

Mr. Jacobson stated that they are trying to appropriately work through the issue. He stated that there is now a new issue and that they are trying to do the right thing for the applicants, Xenia Township and to honor the Zoning Resolution. Mr. Stock was asked what needs to be done to recess.

Mr. Stock stated that the meeting can be recessed if it is stated the date to be continued to. Mr. Stock Asked Ms. Sharma if five (5) Business days would be enough.

Ms. Sharma replied that (5) five business days would be enough.

Mr. Stock stated that 5 (five) business days would be May 27. He then asked all involved if the date all said yes, they are available on May 27, 2020 at 7:00 PM.

Mr. Jacobson asked Ms. Sharma if the Board would have to reconvene if it is determined the coverage is limited to only buildings.

Ms. Sharma stated that she did not believe that the Board would have to reconvene, that she and Mr. Stock would be able to work it out with the Hargrove's.

Mr. Jacobson stated that if it is determined that only the buildings are factors, then there is not a need to seek a variance. If the ruling is to include all impervious materials, then there would be an issue for the Board to process.

Mr. Stock advised Mr. Jacobson of ORC regulations for continuing the meeting.

Mr. Jacobson stated that the meeting is continued to May 27, 2020 at 7:00 PM using the same conference call method. If there is not a need for a variance, the Board will close out and this matter will be handled by Xenia Township Zoning.

Mr. Stock asked if there were any questions as to what the Board of Zoning Appeals had proposed.

Mrs. Jean Ann Harner, 1889 Hilltop Road, Xenia, Ohio asked why the outbuilding that is located behind the pool was not included the equation and where the map of the property came from.

Mr. Stock replied that the map was from Greene County GIS (Geographic Information System) and the shed was considered and is called the "she shed/ pool hose".

Mrs. Harner then asked if anyone had done research on the driveway easement that goes into the field behind the Hargrove's home.

Mr. Stock stated that there has not any research done for easements.

Mrs. Harner went on to say that when the home was built, that was when the easement was established.

Mr. Stock asked if there was any proof of the easement.

Mrs. Harner said that it was not for her to prove.

Mr. Stock stated that he was nor aware of an easement and that Zoning does not do a deed search to grant a permit.

Mr. Jacobson asked what impact an easement would have on the Hargrove's.

Mr. Stock replied that you can not build on top of an easement.

Mr. Jacobson stated that Mrs. Harner is suggesting that the easement would go right through the proposed location of the new building.

Mr. Stock stated that is correct, if there is an easement that has been written and recorded.

Mr. Jacobson asked Mr. Stock if that would be an issue dealt outside if the Board of Zoning Appeals.

Mr. Stock replied that an easement would not be a Board of Zoning Appeals issue.

Mr. Jacobson asked The Hargrove's if they had any knowledge of the easement.

Mr. and Mrs. Hargrove both replied that the y had no knowledge of an easement.

Mr. Jacobson made a motion to continue until May 27,2020 at 7:00 PM.

Meeting Recessed until May 27,2020 at 7:00 PM

ATTEST:

Alan D. Stock, Zoning Inspector

