

Minutes

Clark County Board of Zoning Appeals

Regular Meeting ~ 2:00 pm.
Thursday, January 30, 2020

Springview Government Center
3130 East Main Street
Springfield, Ohio 45505

Mrs. Jerri Taylor, Chairperson of the Clark County Board of Zoning Appeals of Clark County Ohio, called the meeting to order at 2:00 pm. and asked for the Roll Call.

Present For Roll Call: Mr. Duffee, Mrs. Taylor, Mr. Hazlett and Mr. Smith.

Absent For Roll Call: Ms. Riggs and Ms. Wilt.

Also in Attendance: Mr. Allan Neimayer, Mrs. Jennifer Tuttle and Ms. Rachel Clime of Clark County Community and Economic Development.

Approval of the December 19, 2019 Minutes

Motion by Mr. Smith, seconded by Mr. Duffee, to **Approve** as presented.

VOTE: Yes: Mr. Smith, Mr. Duffee and Mrs. Taylor.

No: None.

Abstain: Mr. Hazlett.

Motion Carried.

Chairperson Taylor explained how the meeting would be held.

Motion to Remove Case BZA-2019-34 ~ Property Owner/Applicants: Nick & Leigh Ann McCulla ~ Location: 17 Medway Dr., Bethel Twp.

Motion by Mr. Smith, seconded by Mr. Duffee, to **Remove** the case from the table.

VOTE: Yes: Mr. Smith, Mr. Duffee and Mrs. Taylor.

No: None.

Motion Carried.

Case #BZA-2019-34 - Property Owner/Applicants: Nick & Leigh Ann McCulla ~ Location: 17 Medway Dr., Bethel Twp. ~ Request, as amended on 12-19-2019: (a) Variance from Chapter 8, Section 808.09.07 to allow solar panels detached from the principle residential structure in the front yard, and (b) Variance from Chapter 8, Section 808.09.04 to allow solar panels detached from the principle residential structure to exceed 15 ft. in height.

Mr. Allan Neimayer, Senior Planner, stated the subject property is located at 17 Medway Dr., Lot #18 of the Meadowlawn Subdivision, and consists of 0.216 acres. The property is zoned R-2A (Medium Density Single-Family Residence District). The Applicants are seeking variances to Chapter 8, Section 808.09 to allow solar panels detached from the principle residential structure in the front yard and to exceed 15 ft. in height. Updated information from the Applicants was provided to the Board.

With no questions for Staff Chairperson Taylor opened up the public hearing at 2:06 pm.

Minutes

Clark County Board of Zoning Appeals

Nick & Leigh Ann McCulla, Property Owners/Applicants, 17 Medway Drive, were sworn in. Mr. McCulla stated that he wanted to address the height issue. They had a 9 ft. pole and I used an 8 ft. pole. The current height is 11 ft. 3 inches. He added for the record it is under the maximum height. Therefore, we are only looking at the one variance for being in the front yard.

Mr. McCulla stated that the Board asked me at the last meeting to ask my neighbors about trimming or cutting down the trees. The neighbors responded no and they wrote a letter. The Board also wanted me to contact a solar professional. I contacted eight different companies, a majority of them would not do assist me because I did not buy the product from them. Others wanted to charge me over \$1,000 dollars. Mr. McCulla stated the solar panels cannot be placed in the backyard because of all the trees, and the red line is the telephone line and we cannot put solar panels under a telephone line. The north side is shaded, the only part of our yard with full sun is where they are at now. There are too many trees in the backyard and a telephone line, and an electric line.

Mr. McCulla stated that last month Mr. Smith had asked about exploring different designs. I contacted my supplier to get a different design for the driveway and it was going to be \$12,000 to get just the structure. Mr. McCulla stated, I did everything the Board asked and that is what we came up with.

Mrs. McCulla added we understand that the Board is here to speak on behalf of our neighbors and their property values. We feel that we really try to be good neighbors as well. But we do understand your perspective on whether or not our solar panels detract or attract property values of our surrounding neighbors. We feel we have good relationships with our neighbors. They initiated that petition. The Board asked us to speak to our neighbors about their trees and cutting them down. Instead I spoke to them about their thoughts on our solar panels. They could not attend this meeting but they wrote a letter of support. Mrs. McCulla read the letter for the Board. The neighbors do not want to cut down the walnut trees. Mrs. McCulla also gave the Board some information on solar panels.

Chairperson Taylor thanked the Applicants because we have asked a lot from you, and you have gone the extra mile for us. Mr. Hazlett added, I noticed on the petition a lot of people from Fair Avenue have signed it. Can you show us where that is on the map. Mr. McCulla pointed on the slide where Fair Avenue is.

With no further questions for the Applicants, Chairperson Taylor asked if anyone else wished to speak in favor of this case.

Mike Vlastic, 22 Fair Avenue, Medway Ohio, was sworn in. Mr. Vlastic stated that the county's statutes are there to protect everyone in the neighborhood. So my wife and I thought, well lets go see what everyone thinks. I would say roughly 70% of the neighbors around the McCulla's home had no problem with it. I would hope that would serve its purpose.

Tony Gerardi, 850 Whaley Rd, New Carlisle Ohio, was sworn in. Mr. Gerardi stated that he participated with Mr. Vlastic in getting this petition signed. The solar panels have become a talk of the neighborhood. Mr. Gerardi added that he has seen their electric meter going backwards. It is a sign of the times. I would like to see the county promote this activity.

With no one else to speak in favor of this case, Chairperson Taylor asked if there was anyone who wished to speak against this case. Hearing none, she closed the public hearing at 2:23 pm. and asked for Board discussion.

Motion for Executive Session

Motion by Mr. Smith, seconded by Mr. Duffee, to go into Executive Session.

VOTE: Yes: Mr. Smith, Mr. Duffee, Mrs. Taylor, and Mr. Hazlett.

No: None.

Motion carried.

Time Out: at 2:24 p.m.

Time In: at 3:00 p.m.

Chairperson Taylor stated that this has been a very challenging variance request for this Board. We appreciate keeping our properties nice and following the laws and rules. We understand that each variance request is on an individual basis. We have asked the Applicants to go above and beyond. We also appreciate the neighbors that came into speak to help us come to a decision.

Chairperson Taylor then asked for a motion.

Action on Case #BZA-2019-34 - Property Owner/Applicants: Nick & Leigh Ann McCulla ~ Location: 17 Medway Dr., Bethel Twp. ~ Request, as amended on 12-19-2019: (a) Variance from Chapter 8, Section 808.09.07 to allow solar panels detached from the principle residential structure in the front yard, and (b) Variance from Chapter 8, Section 808.09.04 to allow solar panels detached from the principle residential structure to exceed 15 ft. in height

Motion by Mr. Hazlett, seconded by Mr. Duffee, to **Approve** the variance request as presented.

Mr. Hazlett addressed the Applicants. I apologize for taking so long. You have to understand the regulation book is thick. There are a lot of things that we are supposed to adhere to, but we also have the ability to use some common sense. We are talking about a piece of property that is an older lot. I cannot see you increase the lot in any way, it is a hardship. The one thing we do know is this family did not create the hardship. In other words, you did not size this lot up. The project in question with the solar panels, in my opinion, does not fall under a category of recreation or convenience, for example a swimming pool. This (solar panels) has a functional element to it. We understand the way the house sits with the neighbor's trees. Those are not things created by you, so that falls under the category of a hardship. It is because of that that were able to make decisions outside the box. This has to be reviewed individually. We do not want to set a precedent that this is ok everywhere in the county, every case needs reviewed. Even if your neighbors came to us, it would need reviewed, for those reasons on record.

Mr. Duffee stated, I thought that was well spoken. I would also like to thank the Applicants. My concern has been the attitude of your neighbors and the Board has to take into account the community not just the home owner. You have addressed that with the petition and the letter and the presentation here. The testimony is persuasive and allows me to plan to vote yes.

Chairperson Taylor stated I am not a voting member today. I understand the need and want to use solar energy. However, I sit on this Board because I have an interest in how our natural recourses and farmlands are preserved, our communities are aesthetically pleasing and a place where people want to live and work. On a personal note, I do not like the look of those solar panels in the front yard, I think it does detract. Although, having solar panels may increase property values in someone's eyes.

Personally, if I was your neighbor, I would not want to see that structure. Sometimes we have a property where we cannot do everything we want. With the regulations and rules, you have to adhere to them because the property may not be conducive to do the things you want to do.

Mr. Smith stated, I will be voting no on this and I will tell you why. We all have rules and regulations we have to adhere to. For 47 years I have been a contractor and there is a purpose to getting permits to build anything. This could have been avoided had you gone that route. I would rather you have come and asked for a variance for the size and made that work for you. This could have been addressed at that point. Then we would not have to talk about taking it down. It does look cool, but a possible variance having it 2 ft. higher or 2 ft. longer in the backyard where it could provide the necessary energy for you, it could have been worked out. I feel like we are setting a precedent here in my own personal opinion. Once someone sees that, and they do not get a permit, they are just going to go ahead and do it. So for that reason, I will vote no.

Chairperson Taylor called for the vote.

VOTE: Yes: Mr. Hazlett and Mr. Duffee.

No: Mr. Smith.

Motion Carried.

Chairperson Taylor asked staff to present the next case.

Case #BZA-2020-01 ~ Property Owner/ Applicant: Brian Manz ~ Location: 5311 Springfield-Xenia Rd., Green Twp. ~ Request: Variance from Chapter 8, Section 802.06.03 to construct a 36 ft. by 88 ft. pole barn.

Mr. Neimayer stated the subject property is located at 5311 Springfield-Xenia Rd. and consists of 0.65 acres. The property is comprised of part of Lots #11 and #12 of the Catalpa Ridge Addition Subdivision, recorded on October 23, 1946. The subject property is currently zoned R-1 (Rural Residence District). The Applicant would like to construct a new 36 ft. by 88 ft. (3,168 sq. ft.) pole barn to store equipment for an existing business. Because the size of this new pole barn would exceed the maximum size of accessory structures allowed for property less than one acre, the Applicant has filed this variance request.

Mr. Neimayer reviewed Section 802.06.03, zoning requirements for accessory structures for lots less than one acre: maximum size of accessory structures, 1,500 sq. ft.; maximum height, 18 ft.; minimum setbacks, 5 ft.

Chairperson Taylor asked, it appears the number of current additional structures is two? Mr. Neimayer responded that is correct. She then asked, so this request would make it three? Mr. Neimayer replied, I will let the Applicant respond to that.

Mr. Smith asked, do we have a location on the leach bed and well. Mr. Neimayer responded all I have is the Health Department is ok on this. Mrs. Jennifer Tuttle, Planner, added the Applicant emailed Staff the Health Department's approval and I will try and pull it up. It will be on here if I can pull up the email. The email had not come through yet.

With no further questions for Staff, Chairperson Taylor opened the public hearing at 3:17 pm. and asked if the Applicant wished to speak at this time.

Brian Manz, Property Owner/Applicant, 5311 Springfield-Xenia Rd, was sworn in. Mr. Manz stated that, the separate structures, I am not opposed to adding it onto my garage. I wanted a 40 ft. by 80 ft.. When talking with Mike Asebrook, Chief Building Official, he said it would be better to make it separate. I own a landscaping company and were car enthusiasts. Right now, I have to rent a building to store my equipment. By constructing this new building, it will save me a lot of money because this is my forever home. I plan to put a privacy fence up to cover up my wood pile for my wood burner. I spend \$800 a month just on storage fees. If I leave my equipment out it will get stolen or tore up and then my insurance goes up.

Mr. Smith asked, what is the smaller structure? Mr. Manz responded, that is my girlfriend's she-shed.

Mr. Hazlett asked, the building to the north next to your garage, what is the condition of it? Mr. Manz responded, it is pretty new. The Amish came in and put that in for me. Mr. Hazlett added, you are only allowed two outside structures on that lot. We might ask you to attach it. Mr. Manz responded I am all for that. I just wanted to see what Mr. Asebrook recommended. Mrs. Tuttle added, the Applicant has been talking with the building department. Mr. Manz added, when the other guys built my building, they got all the permits. Now, his current builder wants me to get them. So, this is all new to me.

Mr. Duffee asked, how would you drive into that structure once it is built? Mr. Manz responded I do have it graveled, but I was planning on pulling in from the side. The unit will be long so it will have to be on the end.

Chairperson Taylor stated looking at the proposed construction it is a little over double of what is allowed. She then asked the Applicant you are not opposed to making it one structure? Mr. Manz responded I would actually prefer that.

Mr. Hazlett asked, do you have a well? Mr. Manz responded, yes it is near the front. Mr. Hazlett asked, any power lines? Mr. Manz responded, no.

With no further questions for the Applicant, Chairperson Taylor asked if anyone else wished to speak for the case. There was none. She then asked if anyone wished to speak against the case. There was none. Chairperson Taylor closed the public hearing at 3:28 pm. and asked for Board discussion.

Chairperson Taylor asked Mr. Neimayer, could we turn down this variance request and ask the Applicant to make it one structure, or do we amend the request? Mr. Neimayer responded you can amend it.

Mr. Hazlett stated the aerial view looks more country than developed. It is pretty open, so I understand what he is going through. I would be willing to go ahead and approve this with the amendment that it will be attached to the existing garage.

Mr. Smith stated he agrees with Mr. Hazlett. We just need to amend it to have new structure attached to the existing garage.

Chairperson Taylor re-open the public hearing at 3:30 pm. She then asked the Applicant if he would keep the size the same or would you make it uniform with the existing building? Mr. Manz responded he would leave it how it is.

Minutes

Clark County Board of Zoning Appeals

Mr. Hazlett asked, what is the distance from the back side of the building to the lot line? Mr. Manz responded if we attach it I would have to move it up so it will be flush across the back and be able to gain entry from the side.

Chairperson Taylor closed public 3:31 pm. Hearing no further discussion from the Board, Chairperson Taylor asked for a motion.

Action on Case #BZA-2020-01 ~ Property Owner/ Applicant: Brian Manz ~ Location: 5311 Springfield-Xenia Rd., Green Twp. ~ Request: Variance from Chapter 8, Section 802.06.03 to construct a 36 ft. by 88 ft. pole barn.

Motion by Mr. Hazlett, seconded by Mr. Smith, to **Approve** the variance request conditioned that the new pole barn be attached to the existing garage.

VOTE: Yes: Mr. Hazlett, Mr. Smith and Mr. Duffee.

No: None.

Motion Carried.

Chairperson Taylor asked staff to present the next case

Case #BZA-2020-02 ~ Property Owner/Applicants: Kurt & Linda Skinner ~ Location: 3760 Hustead Rd., Mad River Twp. ~ Request: Variance from Chapter 8, Section 805.02.012.1 to allow for a six ft. tall fence in the front yard.

Mr. Neimayer stated that the subject property is located at 3760 Hustead Rd. and consists of 1.10 acres. The property is zoned A-1 (Agricultural District). The Applicants had contacted the zoning office for regulations on installing a fence. Although it was explained that the fence cannot be taller than four (4) feet in the front yard, there was a misunderstanding of what is considered the front yard. After a six foot tall fence was installed in the front yard, a zoning complaint was made. A site visit was made verifying the zoning violation and the Applicants were notified. The Applicants would like to keep the six foot tall fence as explained in the Applicant's narrative and have filed this variance request.

Mr. Neimayer reviewed Section 805.02.012.1: "The height of any fence or wall shall not exceed four (4) feet above the ground at any point, except that in instances where single-family homes front on major or secondary thoroughfares, such ornamental fences or walls shall be not more than six (6) feet in height". Mr. Neimayer stated he consulted with the County Engineer's Office and with the Transportation Coordinating Committee Office on the classification of Hustead Road and both concurred that Hustead Road is not a major or secondary thoroughfare.

Chairperson Taylor asked how far back does that fence go? Mr. Neimayer responded, all along to the back yard for separation.

With no further questions for Staff, Chairperson Taylor opened the public hearing at 3:37 pm. and asked if the Applicants wished to speak at this time.

Kurt & Linda Skinner, Property Owners/Applicants, 3760 Hustead Rd., were sworn in. Mrs. Skinner stated we have some difficulties with our neighbors, and it has been difficult for both sides. They put up signs up and down our driveway. It felt very threatening. We had a survey done and then we put

up a fence to hide the signs. We were aware to not do the 30 ft. right-of-way, but we did not realize it was 4 ft. instead of 6 ft. Since it is already there were asking to keep it. Our neighbor's trees are in the right-of-way, not our fence.

Mr. Hazlett asked, the end post that is there, is that your fence? Mr. Skinner responded yes it is. Mr. Hazlett then asked you brought your privacy fence how far toward your property? Mr. Skinner responded two feet. Mr. Hazlett stated there does not seem to be any obstruction of view from what I can see. Chairperson Taylor asked does the fence follow the property line all the way back? Mrs. Skinner responded, no it stops by the house that is by the driveway.

With no further questions for the Applicants, Chairperson Taylor asked if anyone else wished to speak in favor of this case. There was none. She then asked if there was anyone who wished to speak in opposition to this case.

Amy Salser, 3750 Husted Road, was sworn in. Mrs. Salser stated that she and her husband have owned their property for 38 years. We respectfully ask that the fence go down to four feet. We do not care for the fence. We are just asking that it go down to four feet. Mrs. Salser stated, I'm scared that someone is behind the fence and is going to burglarize my home because you cannot see our house from the road anymore. She added, we would not be here today if the Skinner family did not trespass onto our property. She stated that they started cutting our trees. Two and a half years ago the Skinner's contacted us about two trees on our property. They were concerned the trees could fall so we got them cut back. Mrs. Salser stated that in 2019, when she was driving home from work, she could see from a distance 25 ft. of frontage was cut. She stated that she had called the Skinners and they said they did it. Mrs. Salser claimed "they had trespassed on our property, and two weeks later they went back and cut more of the same trees." Mrs. Salser stated that the first time they trespassed we put up one sign. The additional times they trespassed we put up more signs. She added that their signs were not above three ft. She stated that if they bring the fence down to four feet they will not see the signs.

Mrs. Salser then passed around photographs she took of the properties. She added that we have a lot of cover now with the fence. When it was just the trees you could see through. The fence is suffocating. When we stand and look out our front yard it is a lot. This is the second thing the Skinners have done. They should have contacted us about cutting the trees or contacted you before building the fence. Mrs. Salser stated that she met with Mr. McClure, Mad River Township Trustee. Mr. McClure told us what to cut from across the front of our property and we did that. She added that when they step out the front door of their house that fence is what they see. She stated that it feels "threatening" and feels like a "prison wall". Mrs. Salser stated, if the fence is allowed some people would think that it is ok. If the fence is altered from six feet to four feet they would not be able to see our signs. If they would not have illegally trespassed on our property, cut our road frontage, and cut our trees, we would not be here. They could be held liable for the value of those trees if the trees die. We love our property. We want to enjoy it again and feel safe again.

Derek Salser, 3750 Husted Road, was sworn in. Mr. Salser stated he is 5' 11" and that fence is 6' 4" and I cannot see over it. We have been robbed before and the Sheriffs cannot see our property. We cannot see anything. I also want to add that the old Husted Elementary school was closed and sold to a man, who then sub-leased parts of that property to different people to store stuff. There are trucks there at 10:30 at night. This is a major safety concern. When we were robbed, they came from behind our house from that school. And now that fence is there, the Sheriffs cannot see our house from the road. Mr. Salser added that if they could take this fence down to four feet then everyone will be happy.

Mrs. Salser passed out more pictures to the Board for the record.

Bob McClure, 5104 Rebert Pike, was sworn in. Mr. McClure stated he is one of three Trustees from Mad River Township. I appreciate the rule of a variance. I am here today because we are presented with a situation where one of our residents have decided they wanted to do something on their property, and found out later that is not in compliance. And, we have another resident that feels it impacts them, it restricts their visibility. None of us live there, they live there. I have been out to the site and our township deputy has been out there. This would set a precedent. It goes against the rule or regulation. That regulation is in place for a reason.

With no one else to speak, Chairperson Taylor closed the public hearing at 4:08 pm. and asked for Board discussion. Chairperson Taylor re-opened the public hearing at 4:08 and asked if the Applicants would like time for rebuttal.

Mrs. Skinner stated that a lot was said that was not true. The tree that was cut back was hanging low over our driveway. Our delivery trucks and propane trucks would have to go off our driveway in order to get around the low hanging branch. Communication with our neighbors has been extremely difficult. We did not go on their property to cut down any trees. The property lines were not clear. When we got the survey done, two of their "no trespassing signs" were on our property. In terms of the fence, it is a big fence and it has given me a lot of safety and protection. I actually thought our neighbors would like it. Mrs. Skinner added, in the spring and summer time the trees in the front of our homes are so dense you cannot see our homes from the roadway.

Chairperson Taylor closed the public hearing at 4:11 pm. and asked for Board discussion.

Mr. Smith stated that this is a slight take off from the previous case. There are rules that we try to adhere by. I do not see a reason that the six foot fence is a good thing or a bad thing. The lots are separated by trees and they are far away from each other. I do not see a plus or a minus other than it is in violation of our code. So personally, I think that is we have to look at.

Chairperson Taylor stated, I can tell from listening to both sides there is a great deal of issues. Personally, being a homeowner, I am not sure I would want to look at a six foot tall fence and differ from the beauty from both lots. I live in the county and what I love most is there not being any fences around our properties. A new resident moved in by our road and the first thing they did was put up a great big fence. I just think it is awful and it is like living in the city again. I would just hate to see a fence go up that detracts from the two beautiful properties.

Mr. Duffee stated I think the history and the emotional involvement in the fence on both sides is immaterial to what we have to consider. There is a zoning regulation and a variance that has been requested. My own thoughts are persuaded and influenced by Mr. McClure who represents a larger issue than just the two property owners, and I think that will sway my vote.

Mr. Hazlett stated, it is a shame the neighbors are having these issues. Our thing is, is there a reason for the six foot tall fence that a hardship classification would justify it. And this particular case I do not see where it should be looked at as a hardship. There are regulations in place for a reason.

Mr. Duffee added, I think we all understand that there was an honest mistake made. The desire for the fence was there, but understanding the difference between the side and front yard we completely understand. So we do appreciate that.

Chairperson Taylor asked Mr. Neimayer, are there any regulations on whether or not the fence is solid or visible? Mr. Neimayer responded no.

Hearing no further discussion from the Board, Chairperson Taylor asked for a motion.

Action on Case #BZA-2020-02 ~ Property Owner/Applicants: Kurt & Linda Skinner ~ Location: 3760 Husted Rd., Mad River Twp. ~ Request: Variance from Chapter 8, Section 805.02.012.1 to allow for a six ft. tall fence in the front yard.

Motion by Mr. Smith, seconded by Mr. Hazlett, to **approve** as presented.

VOTE: Yes: None.

No: Mr. Smith, Mr. Hazlett and Mr. Duffee.

Motion failed. The variance request is denied.

Election of Officers for 2020

Motion by Mr. Duffee, seconded by Mr. Hazlett, to elect Jerri Taylor as Chairperson and Rick Smith as Vice-Chairperson.

VOTE: Yes: Mr. Duffee, Mr. Hazlett, Mrs. Taylor and Mr. Smith.

No: None.

Motion Carried.

Staff Comments

Mr. Neimayer stated the next scheduled meetings will be on February 27, and March 26, 2020.

Adjournment

Motion by Mr. Smith, seconded by Chairperson Taylor, to **Adjourn.**

VOTE: Motion carried unanimously.

The meeting was adjourned 4:23 p.m.

Mrs. Jerri Taylor, Chairperson