

**MEDINA TOWNSHIP
ZONING BOARD OF APPEALS
ORGANIZATIONAL/PUBLIC HEARING
JANUARY 15, 2020**

Secretary Ferencz called the organizational meeting of the Medina Township Board of Zoning Board of Appeals to order at 7:00 p.m. Permanent members Blakemore, West, Watts Gray and Morel were in attendance. Alternate member Chris Greene was also present.

ORGANIZATIONAL MEETING

Election of Officers

Nominations were called for Chairperson.

Mr. West made a motion to nominate Ed Morel as Chairperson of the Board of Zoning Appeals for the calendar year 2020. It was second by Mr. Blakemore. The nominations were closed.

ROLL CALL-West-yes, Blakemore-yes, Gray-yes, Watts-yes, Morel-yes.

Nominations were called for Vice Chairperson.

Mr. West made a motion to nominate Carey Blakemore as Vice Chairperson of the Board of Zoning Appeals for the calendar year 2020. It was second by Ms. Gray. The nominations were closed.

ROLL CALL-West-yes, Gray-yes, Watts-yes, Morel-yes, Blakemore-yes.

Set hearing dates/Confirm hearing posting

The Commission stated they would continue to meet on the 3rd Wednesday of the month at 7:00 p.m. Posting of the meeting would be placed on the Town Hall marquee, website and The Gazette accordingly.

The organizational meeting was closed at 7:06 p.m.

The public hearing was opened at 7:06 p.m. Permanent members Blakemore, West, Gray, Watts and Morel were in attendance. Alternate member Chris Greene was also present. Chairman Morel explained the procedures for the hearing. He then stated he had to recuse himself this evening as he lived on the same street as the applicant and was friends with the neighbors who were present this evening to testify. Alternate member Chris Greene sat in for a full 5-member Board.

Murray variance request-3820 Foscett Rd.

Secretary Ferencz read the application into the record. The applicant is Connie Murray. Address of the property requiring the variance-3820 Foscett Rd. Zoning-RR. Previous variance request(s)-No.

Variance being requested & Explanation of Requested Variances:

Relief from Section 401.3E (25' minimum side yard width) to allow existing shed to remain approximately twelve (12) inches from the side lot line where it was built almost ten (10) years ago.

The shed was on the property when I bought it in 2013 from Robert Moran. His son, Dan Moran, has lived next door (3812 Foskett Rd.) for twenty-two years. Robert Moran constructed the shed in 2010 with the assistance and input of Dan Moran (see attached statements from Robert Moran and Gregory Moran). At that time, they had a discussion regarding the location of the shed and the side yard zoning requirements. Dan Moran and his wife asked Robert Moran to place the shed in its current location so that it would not interfere with their view of the lake in the back. Dan Moran then led the construction of the shed with the help of his wife and other family members. Further, Dan Moran maintained the shed through the years and painted it prior to my purchase in 2013.

The shed fits in with the overall character of the property and the rural residential zoning district. The shed has a barn-like design with roof shingles. It is painted a light beige color and has brown (russet) painted trim with a small window on each of three sides (see attached photographs). I use the shed for storage of gardening tools and equipment.

- A. Practical difficulties or significant hardship: Dan Moran and his father constructed the shed very well. It would take considerable effort, engineering, and expense to move this structure. The foundation has twenty (20) posts (4'x4') which they cemented into the ground four (4) feet deep. Dan Moran has erected a barbed-wire, electrical fence on his property one (1) foot away from the shed, it would be difficult for movers to access the shed on that side. Other locations on my property are not suitable due to existing trees and the septic system. Further, it would obstruct the neighbor's view of the lake (which is the reason for its current placement).
- B. Exceptional Circumstances: The facts which give rise to this variance application are incredibly unique to this property. Indeed the only party that has complained about the shed's location is Dan Moran-the person who directed the location of the shed and personally led the construction effort. Thereafter, he maintained the shed and painted it. Now nearly ten (10) years after the construction of the shed and six (6) years after my purchase of the property, Dan Moran decided that the Township should enforce the zoning ordinance. Dan Moran filed a lawsuit against me in Medina Common Pleas Court Case No. 19CIV0386 alleging that the shed created a nuisance. When it came to light at deposition that Dan Moran had no proof of nuisance whatsoever, his attorney dismissed the case. The shed is camouflaged by a tree when viewed from the road. Its location close to the lot line is not unique to the area. The 25-foot minimum side yard was not observed on the boundary

line between my house and 3828 Foskett Rd. (the other side of my house).
The houses sit approximately thirty-four (34) feet apart (see photo attached).

- C. This variance will not be detrimental to the public interest as it has been in its location since 2010 and no other neighbor has expressed difficulty with its placement. It will not materially impair the purpose of the resolution as it is camouflaged by a tree when viewed from the road and fits in with the character of the properties at 3828, 3820, and 3812 Foskett Rd. The safety, health, morals, convenience, and general welfare of Medina Township are not affected by the location of the shed.

The applicant, Ms. Connie Murray was sworn in. She stated she was before the Board this evening seeking relief of Section 401.3E (25' minimum side yard width) to allow the existing shed to remain approximately twelve (12) inches from the side lot line where it was built almost ten (10) years ago.

Mr. West asked when Ms. Murray bought the property. Ms. Murray responded September 2013.

Vice Chair (VC) Blakemore asked if the shed was there when Ms. Murray purchased the property. Ms. Murray answered yes. VC Blakemore asked if the fence was there when she bought the property. Ms. Murray said no. He then asked how long the fence has been there next to the shed and was the fence Ms. Murrays. Ms. Murray stated the fence was built by Mr. Dan Moran over Labor Day weekend 2015.

VC Blakemore asked about the distance between the homes to which Ms. Murray stated approximately 34 ft. VC Blakemore asked if she knew when the homes were built in that area to which Ms. Murray stated in the mid 1950's. Mr. West stated due to the age of the homes the distance between them (i.e. side yard setback requirement) was grandfathered. VC Blakemore asked, what about the shed to which Mr. West stated if it was built in 2010 the side yard setback was 25 ft.

Ms. Strogan Chair of the Zoning Commission was sworn in. She stated zoning was not put in place until 1950 for Medina Township. The houses built back then are pre-existing non-conforming residences. The shed in question never received a permit to be built and added she did not believe the Zoning Inspector knew there was a shed until it was brought to light because it is behind a tree.

Mr. Greene asked if there were any disclosures that the seller was aware of any zoning violations on the property and if so was that disclosed in the real estate contract when Ms. Murray purchased the property. Ms. Murray stated she believed that since the property had a title search that the property was free and clear of any zoning violations. There was nothing disclosed to her that there were any zoning violations on the property.

Regarding Ms. Murray's survey documentation it appears the surveyors talked to their lawyers and the lawyer put in their disclaimer that it is not a boundary survey so that it really doesn't tell you anything other than for mortgage purposes that the property is acceptable. So even though you can look and see that the shed sits on the property line; or very close to the property line...Ms. Murray interjected that at that time she did not know exactly where the property line was located. There was no fence; no indication to her that needed to be investigated. Ms. Murray added she had property surveyed in 2018. That's when she was absolutely sure where the property line was located. Mr. West stated it was a mortgage location survey not a boundary survey that was completed.

Ms. Gray asked how much property Ms. Murray owned. She responded 1.10 acres.

Mr. Pete Ellioff was sworn in. He stated he lived at 3774 Foskett Rd. from 1990-2010 and now lives at 2823 Franklin just across the lake from both of these properties. He stated Mr. Dan Moran built his house in 1998. It was a vacant lot and he built the house on it. Mr. Moran's father came to Medina 10 years later and bought the house next door which was an existing residence built in 1955. Dan Moran returned home from a vacation in Florida to find that this 10x20 building was built not in the middle of his father's backyard but right on the property line. His father already had the platform completed when Dan Moran got back from vacation. In 2011 his father put the house up for sale. It was his father that did this to Dan Moran and to Connie Murray.

Mr. Ellioff continued Dan Moran came to the Township to try and get it straightened out in 2011 but his father beat him to it. Some how it came out that the shed was grandfathered but that is not the case because it was built in 2010. It's not Ms. Murray's fault the shed is where it is; it is Dan Moran's father's fault. The variance request is practically 100%. He added Mr. Moran had a survey done by Campbell and Associates that shows the shed is literally on the line. In 2013 a few months before Ms. Murray purchased the residence, Dan Moran's father had the oil tank under the crawl space and without any disclosure before the purchase, Dan's father removed the tank and there were 4-5 hundred gallons of raw heating oil left under the foundation and the crawl space. Mr. West interjected that was not relevant to this specific case. Mr. Ellioff stated he knew that but with respect to Ms. Murray he wanted her to know what occurred before she bought the property and that she should be aware that it is unsafe and unhealthy. There was never a permit taken out to build the shed and that is not on Dan Moran that is on his father Robert Moran. The raw oil was never removed. They put plastic over it and then 2 tons of gravel and left the windows open for a month and then it was purchased by Ms. Murray who had no idea what had taken place with the residence.

Dan Moran (3812 Foskett Rd.) was sworn in. He read his rebuttal to Ms. Murray's variance request.

To: the Medina Township Board of Zoning Appeals

January 15, 2020

Re: Zoning Appeals Duncan Factors - 3820 Foskett Rd. Medina, Ohio 44256

Daniel and Kelly Moran's rebuttal to Connie L. Murray's variance request:

1. Miss Murray's written use of the shed is to store gardening tools and equipment. The property's beneficial use and its ability to yield a reasonable return will not be affected without being granted a variance, because she will still have the benefit of using the out-building for this purpose even if it is moved to a legal location on her property.
2. Miss Murray's request for a variance of 24' out of 25' is a substantial variance. According to the Campbell's and Associates map that I provided, the back corner of the shed is touching the property line and the front is just off of the property line. (see boundary survey from Campbell & Associates)
3. The essential character of the rural residential neighborhood has been changed. It now looks like a neighborhood of Cleveland, due to the shed's close proximity between the houses. If the shed were moved to a correct location based on the zoning law, this would allow for the low density feel of the rural area that was intended in the zoning resolution. The current urban character reduces my curb appeal and vastly reduces my property value. HGTV estimates 5-15% of a home's value is based on curb appeal / neighborhood appeal. Even at the lowest loss rate of 5%, I have lost an approximate value of \$12,000, based on my estimated home value of \$250,000.00 by a licensed realtor (Kevin Ward). This will also make it difficult for me to sell my home in the future.
4. Due to the closeness to the shed between the two homes, fire trucks cannot access Miss Murray's back yard. In case one of her open weed burns gets out of control, several houses could be in jeopardy with no ability for fire services to get to the fire quickly. (See attached photo #3)
5. Miss Murray purchased 3820 Foskett Road by signing an "as is where is" purchase agreement from Robert Moran. Any dispute that Miss Murray believes she has is with Robert and Peggy Moran, not Daniel Moran.
6. As shown in the aerial images and the backyard photograph there is a large area of open, flat land on Miss Murray's property giving her plenty of options of where to legally move the shed to. (pictures 4 a & b) The shed does not have a permanent foundation. Instead, it was built on 4" X 6" runners to make it easy for removal once Robert Moran sold the property. The posts can be cut and the shed can be hooked to a pick-up truck for relocation, among other options if so desired.

Mr. Moran then produced copies of the boundary survey he had paid Campbell and Associates to complete.

Mr. Moran continued that it has already been decided by the Medina County Prosecutor that the shed has to be moved. (See letter in file) Mr. West commented then why are we even hearing this variance request. Mr. Moran stated he didn't know but here we are this evening. He added that Ms. Murray's pictures show the shed is built on runners and therefore it could be moved to a legal location on her property. Mr. Moran also handed out copies of a screen shot he took of a text message between him and Ms. Murray dated June 2015 discussing the shed and its location on his property.

VC Blakemore asked what about 2 years prior to 2013... Mr. Moran stated back in 2011 when his father still owned the property he came to the Township asking the zoning inspector to enforce the code and have the shed moved to a legal location. My father promised me he would move the shed before he put it up for sale. The reason the shed is in that location is because there is a 4-inch vacuum line for an industrial woodshop vacuum. Mr. Moran stated when the idea of a shed was discussed; he said he thought it was going to be an 8x10 shed for the storage of this industrial vacuum.

VC Blakemore stated what happened between 2011-2013 before Ms. Murray purchased the property. Mr. Moran stated he was trying to be a good neighbor.

Secretary Ferencz stated she had two notarized letters i.e. one from Dan's father Robert Moran and Dan's brother affirming that Dan had involvement in the location and construction of the shed. (See file).

Mr. Elioff stated the shed could be moved but not to the backyard because the pipes were cut off to the septic field by Dan's dad, Robert Moran. That is why the backyard is flooded and that is why Ms. Murray does field burns. The shed could be moved up to where the original garage was located. There might be 25 ft. there and then the shed could be tucked up tight to the house. Ms. Murray's backyard is a smelly, nasty swamp.

Ms. Murray stated she had her property surveyed in 2018. The stakes are still there. She asked when did Mr. Moran have his survey done. The answer was September 2018.

Mr. Larabee, attorney for Ms. Murray addressed the Board. He stated he represented Ms. Murray in the lawsuit brought against her by Mr. Dan Moran. The letters from Robert Moran and Greg Moran were their testimonies born out of their depositions stating that the fact is Dan Moran built the shed and in the location it is currently located. Mr. Moran wanted the shed in that location and even maintained the shed i.e. painted it and treated it for pests. Ms. Murray purchased the house from Dan's father and then several years later Dan decided he did not like the shed in that location anymore. It really comes down to a dispute unrelated to the shed. There is a lot of history between these two properties. The proximity of the shed to the property line is not out of character for the neighborhood.

Though the houses may have been built prior to zoning, the character of the area are structures are closer than the 25 ft. setback requirement. The fact the shed was built without a permit is not Ms. Murray's fault as she did not own the property when the shed

was constructed. The location and appearance of the shed is not out of character for the area and it is our position that any opposition that in regard to curb appeal etc., falls flat as well as the fact that Ms. Murray was not the one to build the shed in its current location. Mr. Larabee concluded that he felt the granting of the variance met the spirit and intent of the Zoning Resolution.

Mr. West stated for the record that Mr. Larabee has done legal work for his wife regarding an estate matter but did not feel that would preclude him from serving on the Board this evening but wanted this fact disclosed this evening.

Hearing no further comments by the Board members, the Board considered the Duncan Factors:

1. Will the property yield a reasonable return or whether there is a beneficial use without the variance? The Board stated yes.
2. Is the variance substantial? The Board stated yes.
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? The Board stated no.
4. Will the granting of the variance adversely affect the delivery of governmental services? The Board stated no.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? The Board stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated yes.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? VC Blakemore stated yes. Mr. West stated he felt this was a horrendous situation for Ms. Murray but nonetheless the variance being requested was huge. We have not granted variances for lesser requests for shed. This is practically a 100% variance. This is a terrible situation for the homeowner but is that really the job of this Board to remedy.

VC Blakemore stated he felt the Board needed to look at the two properties not the two property owners and ask one's self if this was a new structure would be allow it to be that close to the property line.

Mr. West made a motion to deny the 24 ft. side yard setback variance for the location of the existing shed at the property located at 3820 Foskett Rd. as presented. It was seconded by Mr. Watts.

ROLL CALL-West-yes, Watts-yes, Gray-yes, Greene-yes, Blakemore-yes.

The variance request was denied.

The Board approved the minutes to their June 19, 2019 and December 18, 2019 public hearings.

Having no further business before the Board, the meeting was adjourned at 8:10 p.m.

Respectfully Submitted,

Kim Ferencz, Zoning Secretary



Carey Blakemore, Vice Chairperson

MEDINA TOWNSHIP

BOARD OF ZONING APPEALS

MEETING HELD 1-15-2020

<u>NAME</u>	<u>ADDRESS</u>
Jon Watts	Staff
DEVIN ELIOTT	
PETER ELIOTT	2823 Franklin
Dean C Lesak	2785 FRANKLIN DR.
Dan & Kelly Moran	3812 Foskett
CARY BLAKEMORE	3393 WATKINS Rd
Allison Stacey	Staff
Michael L. Larabee	COUNSEL FOR CONNIE MURRAY
Connie Murray	3820 Foskett Rd
Brian Marple	3804 Foskett RD
Ben Marple	3787 FOSKETT RD
Jane Ives	Staff
Christopher Greene	Staff
Robin Gray	4874 Remsen
Michael Murray	3812 Foskett Rd
Kayla Boush	2412 Westgate Ave