

**MEDINA TOWNSHIP
ZONING BOARD OF APPEALS
PUBLIC HEARING
MAY 17, 2017**

Acting Chair William West called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:30 p.m. Permanent Board members West, and Gray were in attendance. Mr. Stopa and Mr. Morel was absent. Alternate member Matt Payne and alternate member Boris Williams sat on the Board this evening.

Acting Chair West explained the procedures of the hearing. He stated that there was only a 4 member Board present this evening. Therefore the vote would have to be 3 to 1 in favor of the applicant for a variance to be granted. A tie vote is a no vote. All applicants stated they wanted to proceed with their individual variance requests this evening.

Paintiff variance request-4650 Foote Rd.

Secretary Ferencz read the application into the record. The applicants were Richard and Julie Paintiff. The address of the property requesting the variance is 4650 Foote Rd. Present zoning: UR/NON PUD. Previous variance requests none. Section of the code variance is being requested: Section 403.3E. Minimum Side Yard Width-15 ft. Requesting a variance of 3 ft. to build a barn addition 12 feet from the property line.

The explanation for the variance request: The existing garage that is on the property is only 11 ft. off the property line. We would like to add on to the existing building. The existing building is 20' wide. The new proposed building will be 28' wide. To have one larger building for easy access to the driveway and parking area that are existing. There is an existing drive and parking area on the south side of the existing building.

The applicant Mr. Richard Paintiff was sworn in. He stated we were basically adding on to an existing structure and we would like the two structures to line up with each other. As a result we are asking for the variance so we don't have to offset the other building. We would bring it in 1 ft. on both sides. The existing structure is 30 ft. wide and the new structure would be 28 ft.

Chair West asked where the driveway came in. Mr. Paintiff answered on the left side of the house which would be the south side and it runs down the south side of the existing structure and in front of it.

Ms. Gray made a motion to approve a 3 ft. side yard width variance to construct a 28x30 barn addition for the property located at 4650 Foote Rd. It was seconded by Mr. Boris Williams.

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 no, not in the context of the size of the structure.
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 it would be possible to jut that addition to the middle of the property but the variance is a reasonable request.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

ROLL CALL-Gray-yes, Williams-yes, Payne-yes, West-yes.
The variance request was approved.

Sidor variance request-2871 Franklin Rd.

Acting Chair West stated he just met Mr. Sidor this evening who was involved with his wife's family a long time ago. He was not going to recuse himself as this situation happened before he was married.

Secretary Ferencz read the application into the record. The applicant is John Sidor. The address of the property requesting the variance is 2871 Franklin Rd. Present zoning is RR. Previous zoning requests-none. Section of the code being requested-Section 401.3E. Minimum Side Yard Width-25 ft. Requesting a 13 ft. variance to build a shed 12 ft. from the side property line. The size of the shed 10'width x16'depth x10'height.

The explanation for the variance request. We, my wife and I, purchased the property in 1976. My wife died in 2014 and I became successor owner by operation of the deed and law. When the property was purchased the Township Zoning Resolution did not exist. A garage was built on the property in 1979 and was placed 5 ft. off the southern property line with the permission of the ten township building inspector. I wish to place this shed about 4 ft. behind the existing garage and 12 ft. off the southern property line. The shed will not be viewed from the street. This is the only practical place for the shed taking into consideration the topography of the parcel, the location of the septic tank and the associated leech bed, and the narrow width of the property.

- A) Strict application of Section 401.3 would place the location of the proposed shed in the middle of the leech bed and near the middle of the yard and visible from the

street. Further, considering the topography of the land, placement of the shed further back would place it in the wet area of the parcel that is susceptible to flooding.

- B) When the property was purchased the Regulations were not in existence. Further, the lot width are not substantially different.

- C) The granting of the variance will not be detrimental to public safety and is consistent with the purposed of the Regulations.

A letter was received by the property owners Brian & Susan 2861 Franklin Dr. stating they had no objection to the variance request.

The applicant Mr. John Sidor was sworn in. He stated the letter received was from the property owners to as the north side. He stated his property was prone to flooding in the area which they refer to the lower 40. That is the main reason the proposed shed had to be kept on top of the hill.

Acting Chair West stated the issue is the side yard width which 25 ft. is required and the request is for a 13 ft. variance. This would place the shed behind the existing garage which has a 5 ft. side yard setback. Acting Chair West added it looks like there is a major flood area to the rear immediately behind the house.

Mr. John Bostwick (2879 Franklin Dr.) was sworn in. He stated he had no objection to the variance request. The lower 40 is very susceptible to flooding. There is a creek running through that area.

Ms. Strogin Chair of the Zoning Commission was sworn in. She stated that it was stated in the application that there was no zoning in Medina Township then. Medina Township has had zoning since 1950. A more accurate statement is that the zoning that is current to date did not exist in 1976. It took effect in 1984. She added that Mr. Albert Hood was Zoning Inspector at this time and was liberal in interpretation.

Mr. Payne made a motion to approve the side yard width variance request of 13 ft. to build a 10'x16' shed 12 ft. from the property line for the property located at 2871 Franklin rd. It was seconded by Mr. Williams.

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 it is substantial.

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 no, as the application shows the creek and flood area immediately to the back of the property as well as the location of the septic system and leach bed.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

ROLL CALL-Payne=yes, Williams=yes, Gray=yes, West=yes.

McKiernan variance request-3313 Myers Rd.

Secretary Ferencz read the application into the record. The applicants are Susan McKiernan & Richard Clark. Address of the property requesting the variance is 3313 Myers Rd. Present zoning RR. Previous variance requests-none. Section of the code being requested. An area variance of Section 401.3E. Minimum Side Yard Width-25 ft. The request is for a 24 ft. variance to put an addition 1 ft. from the side property line.

Explanation for the variance request. Make property more desirable. Add curb appeal. This will be 2nd phase of restoration to make more square footage to home. This property to be designed to look like it's already been added to the building. Increase home value.

The applicants Susan McKiernan and Richard Clark and their designer Luc Frapier were all sworn in. Ms. McKiernan stated there home is unique as it was the 1829 one-room schoolhouse. We are very close to the property lines to the side as a result since there was no zoning back in 1829. She added they just wanted to put an addition on the back of the residence.

Acting Chair West stated is it the Board's understanding that the house has a 1.4' side yard setback? Ms. McKiernan responded that was correct. The addition would be all along the back of the residence. Ms. McKiernan stated the existing bathroom would be expanded to 5'x 9' as currently it was only 5'x 5' and would then accommodate a washer/dryer. The kitchen would be expanded 4 ft. so there could be a small dining area. The back door area would also be made a little bigger so one does not fall down the steps when the door is open. Lastly another room would be expanded to 8x8 to be used for some other purpose yet to be determined at this time. The actual addition would be 4x34 and just one floor.

Ms. Gray made a motion to approve a side yard width variance of 24 ft. to construct an addition 4x34 addition (one-story) along the back of the residence 1 ft. from the side property line for the property located at 3313 Myers Rd. It was seconded by Mr. Williams.

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 but it is an extraordinary small and old home located in a historical area.
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. This is an historical neighborhood and this home is being adapted to fit modern times without destroying the home.
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 no.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

ROLL CALL-Gray=yes, Williams=yes, Payne=yes, West=yes.

Parker variance request-5109 Crimson King Court

Secretary Ferencz read the application into the record. The applicants were Andrew & Kelly Parker. The address of the property requesting the variance is 5109 Crimson King Court. Present zoning R-2. Previous requests none. Section of the code requesting the variance is Section R-2 District (B) 5.b.Rear Yard Setback-40 ft. The variance request is for 11 ft. to build a pool 29 ft. from the rear property line.

The explanation for the variance request. 5109 Crimson King Court Variance Application

Initial Answer to Question 5:

Sub-questions (A), (B), and (C) appear to be questions regarding a request for a use variance and this is an area variance. However, as to (A) Please refer to the analysis below of the Duncan factors as to why there are practical difficulties with applying the spirit of the zoning ordinance. As to (B) there are no exceptional circumstances that are unique to our property in comparison to the other properties in the subdivision. We would argue that this subdivision is still being regulated under R-2 which has been removed from the zoning

ordinances. It appears this is a problem that is unique to only residents in this subdivision whereas the remaining residents in the township do not have a similar issue. As to (C), we would defer to our answer in factor 7 and would add that we fail to see how an above ground pool would be detrimental to the public interest when there are so many in the development.

Additional Explanation for Application Question #5.

First and foremost, this is a request for an area variance and not a use variance. Therefore, the requirement of unnecessary hardship is not required and is too stringent of a requirement *Duncan v. Middlefield*, 23 Ohio St.3d 83 page 85.

"The spirit rather than the "strict letter" of the zoning ordinance should be observed so that "substantial justice" is done" In observing the spirit of an ordinance and attempting to do substantial justice, a zoning board of appeals or a reviewing court necessarily must weigh the competing interests of the property owner and the community. When an area variance is sought, therefore, the property owner is required to show that the application of an area zoning requirement to his property is inequitable." *Id*

As opposed to an application for a use variance, no one single factor controls in determining whether the homeowner would suffer practical difficulties. It is clear from the Duncan case that the Ohio Supreme Court listed seven possible factors, however, it was clear also that it is not limited to those seven factors. *Id*.

The following is an analysis of the seven factors listed in Duncan and provided to us in the "variance application packet".

Factor 1: Will the property yield a reasonable return or a beneficial use without the variance request?

Answer: Arguably the property will not be harmed without the requested variance. This is not a multi-dwelling property which was the basis of the Duncan case. The property can still be used and will still be profitable, we assume, if the housing market does not collapse again. However, adding a pool, certainly can increase the marketable profitability of the property.

Factor 2: Is the variance substantial?

Answer: We are requesting an eleven foot variance of the forty foot rear setback requirement. It is clear, from the aerial photographs provided, that this is only eleven feet in an area of open yard that abuts an additional forty feet of open space. Essentially, there will be sixty-nine feet between the rear property and the pool. This is greater than three quarters of a lot in the subdivision. It is more than an entire backyard of almost any lot in the subdivision. The pool itself is, without the variance, twenty-nine feet from the forty foot open space. Furthermore, this is a request to relax the forty foot rear setback restriction not a request to build into or encroach the open space or the rear neighbor's property.

Factor 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?

Answer: Again, unlike in Duncan which was a multi-story / multi-family dwelling in a development that had few if any other similar multi-story structures, we are asking for a variance for a pool. Pools are not new to the Forestview Estates Subdivision. Quite the contrary. There are a minimum of thirty-five pools in the development. This will be the third pool on Crimson King Court alone. The pool on the opposite side of our easterly neighbor who applied for and received a similar variance nine or ten years ago. This pool and the variance requested in no way substantially alters the essential character of the neighborhood nor will anyone suffer a detriment, substantial or otherwise, if the variance is granted.

Factor 4: Will the granting of the variance adversely affect the delivery of governmental services?

Answer: Emphatically no. There is nothing that is inhibited and or affected, governmental services or otherwise by the granting of this variance. This is an above ground pool. At most, the installer would have to dig down six inches to level the area.

Factor 5: Did the property owner purchase the property with the knowledge of the zoning restrictions?

Answer: At no time when we purchased the house over a decade ago, or any time since the purchase, did we have any idea that such an unreasonable rear setback restriction existed. Furthermore, we have printed off the zoning regulations that are on the Medina Township's webpage and all R-2 zoning restrictions are removed from that booklet. In fact if you look at the township's zoning map, Forestview Estate's subdivision is marked as Urban Residential, (see attached zoning map) There is nothing on the township's website or in the Zoning Book (2006) available for download from the township giving any of the R-2 regulations. This caused an inordinate amount of frustration and confusion as we could not find anything that told us why we had to be forty feet from the rear property line. So in short we did not know when we purchased the property nor, apparently, could we have ever known about the R-2 restrictions, unless we asked for a copy of the R-2 regulations and quite frankly how would anyone ever know to ask for something that apparently was found in the early 1990s to be improper and were removed. It begs the question as to why this one subdivision is continuing to be restricted by those regulations and requirements. It also raises a concern over notice and due process.

Factor 6: Whether the problem can be resolved by some other manner other than the granting of the variance?

Answer: No, the pool will not fit anywhere else on the property without a variance. In addition, we are outside of the return period so at best we could return the pool and get store credit. Even the smallest round pool (fifteen feet) would require a variance. They sell an oval pool, which coincidentally, there isn't a single oval pool in the subdivision. The oval pool is a greater expense in terms of a couple thousand dollars. Even still, we would be limited to a much smaller pool and would have to pay thousands more. It is difficult for us to understand how a pool that is fifteen feet, thirty-six feet, and sixty-nine feet from any of our contiguous neighbors would be such an inconvenience, nuisance, or danger that this board

would require us to spend thousands more for less of a pool in order to satisfy a rear set back line that isn't even listed in the zoning regulations. Furthermore, the area we are asking to place this pool is of the least intrusion on any of our neighbors. The placement directly behind the house keeps the house from being an attractive nuisance to those people walking down Crimson King Court. It also keeps the noise and splashing that is inherent in having a pool the furthest away from all neighbors. The particular spot in the yard is the most level spot and would require the least amount of digging. Drainage associated with the closing of the pool would be contained in our yard by this central location whereas placing the pool further to the east or west runs the risk of the pool draining onto either side neighbors' properties. We have discussed the pool and all of these issues with all of the contiguous neighbors and none of them have voiced a concern over us getting a pool. In short, there really is no reasonable alternative solution to the placement of this pool.

Factor 7: Does the granting of the variance uphold the spirit and intent of the Zoning Resolution?

Answer: Yes it does. In fact, pools and recreational activities are encouraged by the zoning regulations. This can be seen in the purpose outlined in Article One of the Zoning Ordinances. Article I, Purpose states in part the following:

It is the purpose of this Zoning Resolution to promote the safety, health, morals, convenience and general welfare; to encourage the use of lands and natural resources in the Township according to their character, adaptability, and suitability for particular purposes; to conserve social and economic stability, property values, and the general character and trend of community development; to prevent excessive concentration of population; to lessen congestion on the streets and highways, to eliminate the need to extend centralized sewer and water outside the 1981 sewer service areas as reflected in the sewer service area map dated 1981 and contained in the Comprehensive Plan, to encourage proper drainage, 1 educational, recreational, and other public facilities; to conserve life, property, and natural resources and the expenditure of funds for public facilities and services. For these purposes, standards for community development and means for the enforcement of such standards are herein established in accordance with the Medina Township Development Policy Plan.

It is the further purpose to adopt provisions for each designated zoning district within which the location, size and use of buildings and minimum open spaces, sanitary and safety measures required and the maximum number of families to be housed in buildings erected or altered in the future, are specified. Section 403 for Urban Residential Districts (UR) states the following:

The UR District is designed to allow efficient use of the facilities already in place, to maintain the natural topography and landscape to the extent possible and to allow for planned developments that allow flexible development standards while maintaining the two(2) units per acre overall. Medina Township Zoning Regulations Book, 2006 Download.

We are asking for a variance to put in an above ground pool. In no way will that variance lead to a change in the topography or landscape. It is the purpose of this ordinance to allow flexible development and maintain the two units per acre, and this pool in no way hinders that purpose. We would further add that this pool and the variance in no way results in a

danger to the community, not any more than the other thirty plus pools in the development, and actually fits in with the design of the subdivision.

As to the overall spirit of the R-2 regulations, it is impossible to say since those are not available. However, we assume that there was a legitimate reason for a forty foot rear setback restriction. We assume that the township did not want a development to become jammed and or built up on top of each other. We assume that green space and open areas were of importance and this restriction was meant to keep things open. However, this pool and variance will change none of that. There is still an enormous open area between the proposed pool location and the neighbor to the rear. (See attached photos of our property) This neighbor, additionally, will not be affected by the pool in any way as his rear property line is fenced off with a privacy fence. The only people that use the area between my house and the rear neighbor are us. Certainly the general public could use the forty foot open space if they were aware that it was there but in all the years we have lived in this house we have never seen a single soul walk back there other than us. As such, we argue that this variance still upholds the spirit and intent of the zoning resolution.

The applicant Andrew Parker was sworn in. Acting Chair West asked if there was anything else Mr. Parker would like to add. Mr. Parker stated there was basically no other area the pool could be placed because of the rear setback line of 40 ft. Where we have chosen to locate it hides it from view of the street and is the furthest from impacting any of the neighbors. It would be located 15 ft. from the neighbor to the west and 36 ft. from the neighbor to the east and 69 ft. from the neighbor to the rear. There is 40 ft. of open space that is reserved behind the properties in this subdivision.

Ms. Strogin stated that initially the 40 ft. of open space behind the homes was supposed to be for walking trails. The residents stated they did not want people walking or riding bikes behind their properties so that idea was abandoned. However, the 40 ft. of open space was not to be considered part of anyone's property. Therefore the applicant would only be 29 ft. from the rear as 40 ft. of it is to remain open space. Mr. Parker stated that was technically correct. The rear neighbor's fence is 69 ft. from the proposed pool.

Mr. Parker stated all configurations were tried and discussed with the zoning inspector to be able to place the pool without a variance having to be requested to no avail.

Mr. Payne made a motion to approve a rear yard setback variance of 11 ft. to build a 24' above ground pool 29 ft. from the rear property line for the property located at 5109 Crimson King Court. It was seconded by Ms. Gray.

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 no because of the 40 ft. open space buffer behind the properties as the result of a court settlement to develop this subdivision.
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 other options were considered but they would impact the neighbors to the east and west.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes. We have considered other similar variances for such structures in this development.


ROLL CALL-Payne=yes, Gray=yes, Williams=yes, West=yes.

The minutes to the Board's **April 19, 2017** meeting were approved as written.

Having no further business before the Board, the hearing was officially adjourned at 8:30 p.m.

Respectfully Submitted,

Kim Ferencz, Zoning Secretary


Ed Morel, Chairperson

Acting Chairperson