

RECORD OF PROCEEDINGS

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Etna Township Board of Zoning Appeals

Held February 23, 20 2021

VA21-01 Meeks 28 Roga Drive

Prior to calling the meeting to order the Chairman explained the Public Hearing Requirements.

The adjudicatory hearing was called to order by Chairman Reis at 5:05 p.m. on February 23, 2021 at the Etna Township Garage. The roll call showed members Trent Stepp, Shannon Mills, Greg Reis, Tommy Hunt, and Eric Nickolas present, along with Clerk Laura Brown.

The nature of the hearing was to consider **Area Variance** request VA21-01 for the application submitted by David Meeks for 28 Roga Road from Section 1005 Accessory Structures.

The public testimony portion of the hearing was closed on January 26, 2021. The applicant David Meeks and Zoning Inspector John Singleton were sworn in during the January 26, 2021 hearing.

Chairman Reis discussed the variance with the Licking County Prosecutor's Office and the board was provided copies of the case law provided. The case law provided was on how the Board of Zoning Appeals is required to rule in relationship to determining "Practical Difficulties" not specific to this variance request regarding an increase in square footage. This case law can be used in all rulings by the Board of Zoning Appeals. The board discussed the case law and how the courts ruled.

David Meeks feels he does have practical difficulties. He owns four lots compared to other properties in his neighborhood. He feels he meets that hardship. Chairman Reis reviewed the hardship requirements. David Meeks discussed the hardship of the tennis court and how this tennis court hurts his property value. David Meeks read from the definition section of the Zoning Resolution defining Unnecessary Hardship. Chairman Reis warned David Meeks that he will be asked to leave if he continues to be disruptive. The board is trying to listen to the applicant and his concerns. The Board of Zoning Appeals has to rule on the Zoning Resolution as written. The Zoning Commission and the Board of Trustees approve the requirements in the Zoning Resolution. The Board of Zoning Appeals has to follow the Standards for Area Variances when granting variances. The public testimony portion of the hearing was closed on January 26, 2021. The board members will discuss the evidence and rule on the request.

The Prosecutor's Office stated all the factors under the Standards for Area Variance should be met. The board has to determine if the variance request is substantial.

Trent Stepp reviewed the factors to approve a variance and the applicant has to meet all eight of the factors in this board's opinion based on the Zoning Resolution. The factors are as follows:

Whether uses permitted in the district may be reasonable established on the property and whether they are economically viable on the property in questions without the variance. This one is a difficult one to meet because the economic issue is not whether the property is economically viable or a building is economically viable it is the investment that was previously made that causes the economic hardship on this request.

Whether the variance is the minimum variance which will afford relief to the property owner which is not necessarily the case. Building an eight hundred square foot building would not require a variance and what is the minimum number that would qualify. In the past the board has granted variances to meet the requirements in purchasing building material and not creating a lot of waste.

Whether the essential character of the neighborhood will be substantially altered or adjoining properties will suffer interference with their property future development and rights as a result of the variance. There are other outbuildings in this neighborhood some are smaller lots with large buildings. This would not alter the character of the neighborhood.

Whether the property in question has unique or exceptional circumstances or conditions that do not generally apply to other properties in the vicinity and within the same district. Trent Stepp does believe they have a unique set of circumstances having a large lot and the tennis court.

Whether the hardship condition was created by actions of the applicant. The applicant did purchase a building that was over eight hundred square feet however the timing of the purchase is challenging because the zoning requirements changed.

Whether the spirit or intent of this Zoning Resolution will be observed and substantial justice done by granting the variance. Trent Stepp feels since the Zoning Resolution did look at square footage originally and changed because of the legality of lot size the intent might be met.

Whether the use requested is similar in character to the permitted uses in the subject district. A tennis court and a building are different in character.

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Whether the subject property is adequate to meet the needs and requirements of the proposed use. The property is adequate to meet the needs.

Using the above answers, the best the board can do is meet three out of the eight requirements to grant the variance.

The board members have to rule on the Zoning Resolution and do not have control in revising the requirements in the Zoning Resolution. The Board of Trustees set the requirements in the resolution. The applicant does have the option to appeal their decision to the court. The board discussed setting a precedence by granting this request.

Greg Reis moved to deny area variance VA21-01 for the application submitted by David Meeks for 28 Roga Road from Section 1005.1, Table 1005A to increase the maximum square footage from 800 sq. ft. to 1200 sq. ft because the Standards for 'Practical Difficulty' have not been met in Section 512.B. The motion was seconded by Trent Stepp. Discussion: The board has laid out point by point the reasons that the denial has been brought before the board by Trent Stepp during the meeting. The questions were answered being generous to the applicant. Some of the points could have been argued either way but some of them could not be changed. A yes vote is to deny the variance request. The roll call on the motion was as follows: Trent Stepp, no; Shannon Mills; yes; Greg Reis; yes; Tommy Hunt, no; and Eric Nickolas, yes; The motion passed 3-2 and the variance request was denied.

VA21-02 Klema Zellers Lane

The adjudicatory hearing was called to order by Chairman Reis at 6:13 p.m. on February 23, 2021 at the Etna Township Garage.

The nature of the hearing was to consider **Area Variance** request VA21-02 for the application submitted by Connie Klema for parcel 010-018372-00.046, north of 119 Zellers Lane, from Section 912(C)(6) Dwelling Bulk.

The applicant has requested the board recess until March. She was not able to attend this evening. The Board will tentatively schedule this for March 16, 2021 at 5:00 p.m.

Trent Stepp moved to recess the area variance request for VA21-02 for the application submitted by Connie Klema for parcel 010-018372-00.046. The motion was seconded by Eric Nickolas and passed by unanimous affirmative vote.

Public Meeting

The Board discussed going into Executive Session to discuss the case law and opinion from the Licking County Prosecutor's Office.

Trent Stepp moved to go into Executive Session at 6:20 p.m. per Ohio Revised Code 121.22(G)(5) regarding matters required to be kept confidential by federal law or regulations or state statutes regarding attorney-client privilege information. The motion was seconded by Shannon Mills and passed by unanimous affirmative vote.

Trent Stepp moved to come out of executive session at 6:44 p.m. The motion was seconded by Shannon Mills and passed without objection.

Trent Stepp noted for the record that during Executive Session we did not make any motions, we did not make any decisions, and no actions of the Board were taken. The Board discussed the information that was attorney-client privileged provided from the Licking County Prosecutor's Office. The entire board along with John Singleton was in the Executive Session.

Trent Stepp moved to adjourn the meeting at 6:46 p.m. The motion was seconded by Tommy Hunt and passed without objections.



Laura Brown, Clerk



Greg Reis, Chairman



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Members: Sarah Benoit-Eric Nickolas-Greig Reis-Mark Schaff-Trent Stepp
Alternates: Tommy Hunt - Shannon Mills

FINAL ORDER

The Etna Township Board of Zoning Appeals held adjudicatory hearings on January 26, 2021 and February 23, 2021 at the Etna Township Garage to consider **Area Variance** request VA21-01 for the application submitted by David Meeks for 28 Roga Road from Section 1005 Accessory Structures.

The Board moved to deny Area Variance VA21-01 for the application submitted by David Meeks for 28 Roga Road from Section 1005.1, Table 1005A to increase the maximum square footage from 800 sq. ft. to 1200 sq. ft because the Standards for 'Practical Difficulty' have not been met in Section 512.B. The motion passed 3-2 and the variance request was denied.

The applicant did not meet all of the requirements in Section 512 Area Variances, B. Standards for all Area Variances, most specifically the variance request was substantial (512.B.2) and can be obviated through construction of a smaller building (512.B.6).

Tommy Hunt

Shannon Mills

Eric Nickolas

Greg Reis

Trent Stepp

The Final Order was approved and signed: March 16, 2021

The Final Order was mailed/mailed to applicant on: March 17, 2021