

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
February 18, 2021**

AGENDA:

Old Business:

Approval of Minutes of Regular Board of Zoning Appeals Meeting held on January 21, 2021.

- 1. 6824 Dora Blvd., Stacy & Elliott Kirth** - Requesting a variance to 1113.09(c) of 2' to permit a driveway to be 22' in width (20' permitted, 22' requested), and to be located on the property line (3' from property line permitted) and a variance to 1165.01 of 1' to permit an addition to be located 5' from the side yard (6' permitted, 5' requested).
(Variance request revised by applicant).

New Business:

- 2. 6937 Hawthorn Trace, Brittany Piper** - Requesting a variance to 1332.08 to permit a generator to be located in the side yard (not permitted).
- 3. 6854 Beechwood Dr., Brian Dalrymple** – Requesting a variance to 1143.02 to permit a second accessory structure (not permitted).
- 4. 6812 Dora Blvd., Mallory Kobak** – Requesting a variance to 1163.04 of 6' to permit a covered porch to have a 69' front setback (75' permitted, 69' requested).

The virtual meeting was called to order by Chairman Mark Moreal at 5:32 p.m. and the following responded to Roll Call:

PRESENT: **Mark Moreal, Chairman**
 Chris Walchanowicz, Councilperson
 Charles Bredt
 Carol Fortlage
 Pasquale Monteleone, Jr.

ALSO
PRESENT: **Gregory J. O'Brien, Law Director**
 Michael Gero, Building Official

Chairman Moreal stated that the Board will wait on the approval of last month's Meeting Minutes, and they will incorporate them into one of our applicants' items that will be coming.

The Chairman stated that at this time, he would like to jump out of order.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Law Director O'Brien asked Chairman Moreal to read the opening statement.

Chairman Moreal stated that before they would start, he would like to read a little summary on what the Zoning Board was all about.

The Board of Zoning Appeals is a quasi-judicial body and, as such, its role is similar to a judge in a court case. The Board will hear evidence and testimony that is factual and will make decisions based upon the facts which are presented and the rules as set forth in the Zoning Code principles of Ohio law.

The City of Independence has adopted a Zoning Code and, per the City's Charter, has appointed a five-member Board of Zoning Appeals. This Board is empowered to hear and decide appeals and to authorize variances from the strict terms of the Zoning Code where the variance will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the Zoning Code will result in practical difficulty or unnecessary hardship, depending on the type of variance requested.

With this being stated, the Board's proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest, mainly contiguous property owners (or their legal representatives), the opportunity to present the evidence, certain procedures need to be followed:

All interested parties must be sworn in. The applicant will be asked to present evidence to support the requested appeal, the Board will ask questions, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence. Any party may ask questions to another party.

It is the applicant's burden to produce evidence to support the application. The Board will not make the applicant's case for them. In order to prepare appropriate meeting minutes, each person who speaks will need to state, for the record, his or her full name and address. The meeting may be continued by either the applicant or the Board. The Board must base their decision upon facts and not on expressions of concerns or non-factual matters. The action of the BZA does not become final until 30 days after the date of the meeting that the minutes are approved by the BZA. Any appeal may be made to the Cuyahoga County Court of Common Pleas by an interested party within 30 days of the date the minutes are approved.

Chairman Moreal stated that the first order of business tonight will be the first item under New Business.

6937 Hawthorn Trace, Brittany Piper - Brittany Piper was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present. There were no neighbors present.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

He asked Ms. Piper to explain why she would need the generator on the side of her property and not in the rear yard.

Ms. Piper stated that they were requesting the variance. She stated that on the side yard, it would be located right where the A/C unit was already in existence. She stated that the rear yard was mostly patio with concrete. She stated that after that, it goes into a drop off. She stated that the line the Board could see on the screen after the green grass, it goes down into the woods. She stated that there was not much of a rear yard there; so they would request the variance simply to put it next to the already existing A/C unit on that side of the house. She stated that it would not be visible from the street. She stated that they were hoping to put it right there. If it would go any further, they would need to pay more to trench through into the backyard with the piping for the gas to hook the generator to.

Chairman Moreal stated that on the drawing Ms. Piper was looking to put ornamental grasses.

Ms. Piper stated that in order to provide a better visual for the neighbors on that side, they were going to continue river rock for easy maintenance and put tall ornamental grasses. She stated that they grow very quickly and spread very quickly. She thought it would look nice on that side of the house to provide the visual barrier for the neighbors.

Chairman Moreal asked if the generator was one that would need to be tested monthly or every once in a while.

Law Director O'Brien replied yes. He asked Ms. Piper if it was a Generac.

The Chairman and Ms. Piper replied yes.

Law Director O'Brien stated that it would be tested every month, which they could schedule it at times convenient them and the neighbors.

Mr. Bredt asked Ms. Piper if she had informed her neighbors as per her intentions.

Ms. Piper stated that she had. She stated that both neighbors were informed. The other side of the house probably wouldn't even notice that it existed; but they have been informed. She stated that actually both have expressed interest in also putting in generators on the side of the house.

Chairman Moreal stated that by looking at the back of her property on the one picture, obviously the best place for her to put it would be in the spot because there was no room in the back underneath the patio.

Ms. Piper stated that she didn't think there was enough space underneath the deck.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mrs. Fortlage asked what was behind Ms. Piper's house.

Ms. Piper stated it was woods. Then after that it was the block for I-77.

Mr. Bredt asked Ms. Piper if the air conditioning unit already installed when she bought the house.

Ms. Piper replied correct. She stated that she was not sure if Pulte had to do anything special, but the A/C unit was already there on the side of the house. She stated that the neighbor's was also on the side of the house.

The Chairman stated that he saw the neighbor's air conditioning unit. He asked the Building Official if all the air conditioning units are allowed to be on the side of the property.

Building Official Gero stated that there was no restriction on location of air conditioning units.

Mr. Monteleone stated that he appreciated Ms. Piper doing the ornamental grasses to buffer the neighbors. He stated that it helps.

Law Director O'Brien stated that he would ask the Board if they would entertain approval, that they make it subject to the installation and constant maintenance of that grass. It would help not only soften the aesthetics, but it will muffle some of the noise during the weekly maintenance cycle.

Chairman Moreal stated that was a good point.

The Chairman asked if it was really a weekly maintenance cycle.

Law Director O'Brien stated that he didn't know because he was waiting for his Generac, probably like Brittany was waiting for her Generac.

Chairman Moreal stated that he didn't really have any more questions.

A motion was made by Charles Bredt, seconded by Councilperson Walchanowicz, to approve the variance, subject to the ornamental grasses being planted and maintained.

**ROLL CALL: Yeas: Bredt, Walchanowicz, Fortlage, Monteleone, Moreal
 Nays: None
 MOTION CARRIED**

6854 Beechwood Dr., Brian Dalrymple – Tim Beaumont of The Pattie Group along with Brian and Erin Dalrymple were in attendance and sworn in.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mr. Beaumont stated that he worked for The Pattie Group, a landscape firm. He stated that they have done some work for the Dalrymples in the front yard with landscaping.

Mrs. Dalrymple stated that they had the landscaping done in 2006.

Mr. Beaumont stated that they were ready to tackle an additional entertaining space in their backyard in conjunction with their existing patio. He stated that the zoning requirements were that one allowed accessory structure was permitted, which they have a shed that was laid on compacted gravel base, it did not have a footer. He stated that he believed they received a variance for that shed to be placed in the easement line previously.

Mr. Beaumont stated that the second accessory structure, as the Board could see in planned view, will be extended off of their patio space and provide a full covered space with entertaining and lounging area for family guests.

He stated that a planting plan was provided to screen the structure so it would not create a nuisance, and it would be architecturally relevant to the surrounding areas of the house.

Chairman Moreal stated that picture of View 3 would be what the accessory structure would look like.

Mr. Beaumont agreed.

Mr. Bredt asked if there would be electrical out there.

Mr. Beaumont stated that they would have electrical out there along with gas being run out there.

Mr. Bredt stated that architecturally he thought it was fine. He stated that it was beautiful actually.

Chairman Moreal stated that it was very nice.

Mr. Monteleone stated that he appreciated the nice landscape design. He stated that The Pattie Group was a well-known company. He stated that it looked great, everything looked great to him. He asked how Steve Pattie was doing?

Mr. Beaumont stated that he was good. He was in Florida. He's living in Florida. He stated that his sons, Brian and Jonas, they were running the company now.

Mr. Monteleone stated that he wanted Mr. Beaumont to tell Mr. Pattie that he said hello.

Chairman Moreal asked if the column posts would be on footers.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mr. Beaumont stated that the column posts would be on footers.

A motion was made by Pasquale Monteleone, seconded by Charles Bredt, to approve the variance as requested.

ROLL CALL: Yeas: Monteleone, Bredt, Moreal, Fortlage, Walchanowicz

Nays: None

MOTION CARRIED

6812 Dora Blvd., Mallory Kobak – Homeowner Mallory Kobak was in attendance and sworn in.

Chairman Moreal stated that he thought the variance was written wrong.

Building Official Gero stated that the variance was incorrect. He stated that the current setback was as indicated on the site plan that the applicant provided. It was 52.2'. The applicant was looking for a 6 foot reduction. He stated that the homes were built prior to the 75 foot requirement; so the whole street was at a 50 foot setback. He stated that the applicant was looking to reduce the current setback by 6 foot. He doesn't know if that was the way the variance should be read, or whether it should be to create a setback of 46.2'.

Chairman Moreal asked on paper what was the setback requirement on that street, 50 feet?

Building Official Gero stated that he didn't have the site plan, the home was built in 1950 or 1949.

Ms. Kobak stated it was 1959.

Building Official Gero stated that he didn't have a site plan for that, and short of a survey being done for what she was requesting, was really not necessary. He stated that the architect provided that the setback was currently 52.2'. He stated that if you look at an aerial view of the street, you would see that all the houses were relatively in line with the fronts of the houses. He stated that it would just be a matter of reducing what they currently have by 6 foot to provide for the porch.

Chairman Moreal asked the Law Director if that was something the Board could work with and word it that way?

Law Director O'Brien stated that the way the Building Official worded it the latter, the second way, would probably be appropriate. It was currently a non-conforming setback.

Chairman Moreal stated that the applicant was looking for a front setback reduction of 6 foot. He asked if that would be correct?

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Building Official Gero replied correct. It was currently a legal, non-conforming setback, and she was looking to reduce it by 6 foot to add the covered porch.

Mrs. Fortlage asked what was the part that sticks out to the right, was that some steps?

Chairman Moreal wanted Ms. Kobak to explain to the Board what she was looking to do.

Ms. Kobak stated that currently there were only the steps which she believed were original to the home which were very unsafe if you were to actually walk up them. She stated that she was trying to extend the steps out and go to the right where the three windows boxes were to have a front porch. So, it would be a total of 19 feet long, 6 feet wide she believes from the drawings; and then it would be covered so the roof line would be extended out. There would be two posts, one on each end. They would be 6 inch posts.

Mr. Monteleone stated that it showed metal roofing there too.

Ms. Kobak replied yes.

Mr. Monteleone stated that it was a nice option.

Chairman Moreal asked if Ms. Kobak was staying in line with the side of the house.

Ms. Kobak agreed.

Mr. Bredt stated that he wished more houses had porches like what Ms. Kobak was proposing because it makes for a much more engaging neighborhood he believes.

Ms. Kobak stated that the front of the house was pretty boring right now; so she was trying to change that.

Mr. Monteleone stated that it was an air conditioner or chimney on the side of the house.

Ms. Kobak stated that was her chimney.

Mr. Monteleone asked if it was concrete or wood.

Ms. Kobak stated that it would be concrete.

Chairman Moreal asked Ms. Kobak if she was getting rid of the existing steps. He asked if everything was being demolished.

Ms. Kobak agreed.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

The Chairman asked where would the steps be located.

Mr. Bredt stated that they would be in line with the front door but just extended out.

The Chairman stated that he saw it. He stated that he didn't have any issues with it.

Mr. Bredt stated that as he stated before, he thinks it makes for a more engaging elevation, and he would like to move approval.

A motion was made by Charles Bredt, seconded by Councilperson Walchanowicz, to approve the variance requested.

**ROLL CALL: Yeas: Bredt, Walchanowicz, Moreal, Fortlage, Monteleone
 Nays: None
 MOTION CARRIED**

Mrs. Fortlage stated that before the Board goes to the next item, she had a question. She stated that on the Beechwood application it suggested that there were additional variances needed, and the Board did not talk about them.

Building Official Gero stated that was because those variances were not required. Those issues apply to storage sheds and pool houses. They didn't apply to accessory structures. He stated that the applicant completed their application, submitted it, and that was the way they interpreted the code. He stated that they did not have a conversation with him prior to, that was the reason.

Mrs. Fortlage stated that she liked that answer. She replied thank you.

6824 Dora Blvd., Stacy & Elliott Kirth - Homeowners Stacy and Elliott Kirth were in attendance and sworn in.

The Chairman asked if there were any neighbors present. There were no neighbors in attendance.

Mrs. Fortlage stated that she wanted to clarify something. She stated that the application that the Board received stated that the driveway would be 1 foot from the property line, and the agenda called it on the property line.

Mrs. Kirth stated that she was going to ask that, and she talked to Debi about this. What was listed on the agenda was what they previously asked for. She stated that what they asked for this meeting has been different, and what they asked for was not being stated. They modified what they were asking for. She stated that what Mrs. Fortlage just read was old business, and what they were asking for was new.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Law Director O'Brien stated that the applicants were requesting to amend their application. He asked Mrs. Kirth if that was correct.

Mrs. Kirth stated that she guessed so. She stated that was what Debi wrote on this agenda. It stated that the variance request was revised by applicant.

Law Director O'Brien stated that they would need to amend the agenda.

The Chairman stated that he believed so.

Mrs. Kirth stated that she talked to Debi about this, and she stated that you would leave it on as Old Business.

Law Director O'Brien stated that she was right. That particular variance request they need to make sure the record was clear on.

Mrs. Kirth stated that they were only asking for the 2 foot to permit a driveway to be 22 foot wide, and the variance of 2 foot to allow for a drive to be 1 foot from the property line, not on the line.

The Chairman stated that was what it stated.

Mrs. Fortlage stated that it was not on their agenda.

Mrs. Kirth stated that was why she called and asked Debi about it to be sure because she didn't see the revision made, and so that was why it was confusing to her; and she stated that the way that you would do that, obviously Mrs. Kirth doesn't do this, so she didn't know. It was because it was Old Business, they would leave it on the way that it was requested last time, but what they submitted and asked for was 2 foot to permit a driveway to be 22 foot wide and a variance of 2 foot to allow for a drive be 1 foot from the property line.

Mr. Monteleone stated so the Board was not talking about an addition.

Mrs. Kirth stated that essentially they were asking for exactly what the Board approved in 2013, with being 1 foot off the property line.

Mrs. Fortlage stated that was not exact because they went with 1 foot 2 inches.

Mrs. Kirth stated that she was lessening it even more then. She was only going 1 foot.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mr. Kirth stated that they were off 1 foot 2 inches from the line, and now what Mrs. Fortlage was saying was it sounded like they were only 1 foot from the line. He asked Mrs. Fortlage if that was how he was taking it.

Mrs. Fortlage stated that was what she was understanding from what she read there, and her recollection of the last time what she read in the Minutes.

Law Director O'Brien stated so the applicants are requesting a variance to 1113.09(c) of 2 foot to permit a driveway to be 22 foot in width, 20 foot permitted, 22 foot requested, and to be located 1 foot from the property line. He asked if that was correct?

Chairman Moreal replied yes.

Law Director O'Brien stated that he would move to amend the agenda for that variance.

A motion was made by Chairman Moreal, seconded by Pasquale Monteleone, to amend the agenda per the Law Director's explanation above.

**ROLL CALL: Yeas: Moreal, Monteleone, Bredt, Walchanowicz, Fortlage
 Nays: None
 MOTION CARRIED**

Chairman Moreal stated to the applicants that the Board did not approve the Minutes, they were going to introduce those Minutes for the record into this meeting; so they don't have to re-hash they talked about. If there was something new to talk about, they will do that.

Mr. Bredt stated that he has relative to the application, and it may be technical for the Law Director, but they were talking about a 22 foot wide driveway. That would only apply to the very front of the house, correct?

Several people replied yes.

Mr. Bredt stated that there was a different issue, a secondary issue of what goes along the house between the two side-by-side houses correct?

Law Director O'Brien stated that he didn't know what Mr. Bredt meant by second issue. He stated that there was a second variance requested. He asked if that was what Mr. Bredt was talking about?

Mr. Bredt stated that the Board has an application for a 22 foot wide driveway. He stated that there was no way that they could put a 22 foot driveway between the two houses.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Law Director O'Brien stated that he will let the applicant speak to that. He stated that just to clarify the record Mr. Chairman, they would be restating and incorporating in full the Minutes that were from the meeting of January 21, 2021 and incorporating them as restated therein. The applicant was certainly able to supplement, amend, change or regurgitate if they feel so inclined to set forth those facts again. He just wanted to make sure the applicants knew that.

Chairman Moreal stated to Mr. and Mrs. Kirth that it was all theirs.

Mrs. Kirth stated that Mr. Bredt mentioned about the 22 foot wide drive. They were only asking for that as the drive would need to come out in order to go along the side of the drive. So, the 22 foot wide would only be in the top portion or the top section of the drive, not the entire drive. She stated obviously it would narrow out as you would be going around the house. She stated that the 22 foot was not the entire drive. She stated that picture shows it would not be that for the entire drive.

Mr. Bredt stated that to that point again he was not trying to be technical, but he wanted to know if there was a minimum code for a driveway in width, regardless of anywhere. He asked if driveways had to be "x" foot minimum?

Law Director O'Brien asked Building Official Gero if he was aware of a minimum driveway per the Ohio Basic Building Code, because the City didn't have a minimum in their code, per se, but it would be limited to, then it would default to the Ohio Basic Building Code. He stated that he didn't know if there was one.

Building Official Gero stated that the Residential Code of Ohio did not address driveway widths. The driveway widths would be addressed by the City's ordinance. He didn't believe that there was anything in residential addressing driveway widths, only for commercial uses.

Law Director O'Brien stated as to minimum.

Mr. Bredt asked if there was a maximum but not a minimum.

Building Official Gero agreed.

Mr. Bredt stated that if you would have a single house in the middle of a lawn, and there was a garage, you don't have to have a driveway to that garage. He asked if that was correct. You could drive over the lawn.

Building Official Gero stated that you could drive over your lawn, but eventually you will create ruts. Then you would be cited and have other issues.

Mr. Bredt stated that the Building Official took the words right out of his mouth.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Chairman Moreal stated that you would have to have a dustless surface.

Building Official Gero stated that cars have to be parked on a smooth, dustless surface, and that was the requirement for a driveway.

Chairman Moreal asked Mr. & Mrs. Kirth to continue.

Mrs. Kirth stated that they could definitely understand the Board's concern with them being on the line; and they revisited it. They have modified it to be asking for to be 1 foot from that line in order to put the drive to get back to their addition. She stated that they were making a modification and hoping that they could make that work. She stated that they were open to having it be turf stone as well and wanted to get the Board's thoughts on that.

Law Director O'Brien stated that before the Board would give Mrs. Kirth their comments, he asked the Secretary to send her and Elliott the Minutes from last month's meeting. He asked if they had an opportunity to get those and review those prior to the meeting.

Mrs. Kirth stated that she did look over them quickly.

Mrs. Fortlage stated that the Board should probably speak out that Debi looked up the driveway width, and in the City's Codified Ordinances they could not be less than 8 feet.

Chairman Moreal asked if that was correct.

Mr. Bredt stated that it was not correct as there was no minimum.

Building Official Gero stated that was correct. He was just looking it up himself, 1113.09 (c) stated that driveways should not be less than 8 feet, not more than 20 feet in single-family districts.

Mr. Bredt stated that was the question he had asked earlier.

Mr. Monteleone asked what would constitute a driveway. Would it be all concrete? Would it be turf stone, both? How would that be determined because right now he was looking at 2 feet of turf stone, 5 feet of concrete, 2 feet of turf stone.

Building Official Gero stated that whether it be turf stone, it could be asphalt, it could be concrete, it could be pavers, it could be any number of things; but a driveway would be a driveway. The fact that he would be putting turf stone in doesn't make his driveway reduce to 5 feet in there; he was creating a 9 foot driveway there on the side.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Chairman Moreal stated he had another question just for his own use, would you define a driveway from the overhang or the house? How would that be determined?

Building Official Gero stated that was a good question because from the house to the property line, he would only have about 9 feet he believes. He stated that he was not sure what the overhang was, he wasn't out, he didn't measure anything.

Mr. Bredt stated that he did that last month, and it was just about 2 feet.

Building Official Gero stated that would reduce the area to 7 feet. He does know that the house next door was 5 feet from the property line.

Mr. Kirth stated to the Building Official that he mentioned that they have 9 feet. After the survey, they were 9 foot 11 inches, just under 10 feet.

Building Official Gero stated that he had 9 foot 3 inches on the information that he has. He stated that they should have provided that survey.

Mr. Kirth stated that he didn't think he provided anything that would actually do that.

Building Official Gero stated that he had to look up an old document in the records the Building Department had.

Mr. Kirth stated that it might have been an old survey, but it was surveyed. He stated that there was a total of 16 feet a couple of inches between both properties; and he has 9 foot 11 inches, just under 10 foot.

Law Director O'Brien stated to answer the question of whoever asked it, they were putting in turf stone which was a dustless surface. He stated that the intention would be to drive on it. So, whether they were expanding their concrete or not, they would actually be forming a drive as if there would be one-third asphalt, one-third concrete, one-third turf stone. He stated that he appreciated their creativity, but just to answer the question, it would be part of the drive.

Mr. Kirth agreed.

Chairman Moreal asked if the driveway would be 7 feet or 9 feet if 2 feet would be under the overhang. That was his question.

Building Official Gero wanted Chairman Moreal to ask the question again.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Chairman Moreal stated that it would total up to 9 feet. He mentioned 8 feet was the minimum. There would be 2 feet under the overhang, would the driveway start from the house or the overhang line?

Law Director O'Brien stated it would be from the house.

Chairman Moreal stated that it would total up to 9 feet if 2 feet was under the overhang. That was his question.

Building Official Gero wanted the Chairman to ask it again.

Chairman Moreal stated that it totaled up to 9 feet. The Building Official mentioned that 8 feet was the minimum. He asked if the 2 feet under the overhang, would the driveway start from the house or the overhang line?

Law Director O'Brien again stated it would be from the house, if the driveway was next to the house.

Building Official Gero stated that the driveway was next to the house; so if there was an obstruction, an archway, whatever there might be, the driveway would be underneath that.

Law Director O'Brien stated that it had nothing to do with the architecture of the house, it was the driveway.

Mr. Monteleone stated that he had a couple of things to say. He stated that it sounded like they have more space than the last time. He asked if that was correct?

Mr. Kirth asked if it was the last meeting or the old survey that the Building Official was talking about.

Mr. Monteleone stated at the last meeting.

Mr. Kirth stated that he went out there, and after running the line as the Chairman suggested to put up from the front pin to the back, that was how he ended up coming up with that exactly.

Mr. Monteleone stated that he had a couple of notes. He stated that when Mr. Kirth was talking last time, maybe a dump trailer of something, would he be running a small business out of the back.

Mr. Kirth replied no.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO**

February 18, 2021

Mr. Monteleone stated that he had no problems with the addition for the space, the driveway was just his concern. He just wanted to touch base on a couple of things like that.

Mrs. Kirth stated that when re-reading the meeting Minutes from last time, you had made a suggestion that if they came a foot off that line, they would be golden. That was what he had said. She stated that they took that into consideration. She stated that they have manipulated this in trying to get it to work.

Mr. Monteleone stated that he thought bringing it in closer to the house would get them their 1 foot. That was what he was talking about last time. He stated that it sounded like they brought that into the house. He stated that there were some pipes that come out of the side of the house, maybe gas or something that they need to be careful with.

Mrs. Kirth agreed.

Chairman Moreal stated that it was their electric meter on the side.

Mr. Kirth stated that it was his custom cedar build out.

Law Director O'Brien stated that from a legal standpoint, he didn't know how their variance could be approved based upon using the turf stone. The turf stone and concrete would constitute a drive; so the application, even though they have shortened it by 1 foot in response to the discussion last month, they haven't. They have changed the material.

Mr. Kirth stated that he didn't change it. They originally agreed if they did the turf stone that would help with drainage and everything. After time had gone by, they have looked at some other properties, and they were right there. They thought maybe they should do all concrete. They submitted for all concrete because he didn't think it would be that big of a concern; but after listening to everybody on the Board, they decided at home, they were fine with the turf stone. They just need a hard surface to ride on to get back there. He stated that it would be done well, done properly, and that was how they went back to the turf stone.

Law Director O'Brien stated that with the driveway that they were requesting, and the turf stone, the edge of the turf stone would still be 1 foot off the property line.

Mr. Kirth agreed. He stated that he was just thinking, he doesn't really need the 5 foot of concrete in the center. He stated that was under the under carriage. He could do the whole thing in turf stone.

Law Director O'Brien stated that he wanted clarification. With the addition of the turf stone and concrete, Mr. Kirth would still be 1 foot off the property line.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mr. Kirth agreed. He stated that he could do it in all turf stone.

Law Director O'Brien stated that it didn't matter.

Mr. Kirth stated that he didn't have to have the concrete under his under carriage. He could make it all the same so that it would look uniform.

Mrs. Fortlage stated that there were 2 issues as far as she was concerned. She doesn't get the math. She stated that there would be 2 feet of turf stone, 5 feet of driveway, 2 feet of turf stone, which makes 9 feet in a 9 foot 3 inch space. She stated that was not 1 foot off the property line.

Mr. Kirth stated it was 9 foot 11, he was 1 inch shy of the 12 inch. He stated that it was 9 feet 11 inches.

Chairman Moreal stated that it seemed like it was more distance this month than last month.

Mr. Kirth replied no.

The Chairman stated that right now Mr. Kirth has 9 feet of surface, and he was a foot away.

Mr. Kirth stated that he thought that was because they weren't incorporating that up against the house. He stated that might be what the Chairman was thinking. He thinks they didn't incorporate that extra space going up against the house; but now that they were all in agreement that it would be part of the drive, that was the increase.

The Chairman stated that he got it. He stated Mr. Kirth's build out, he never measured that, the bump out that was made out of cedar for the electrical, he asked how far that came out.

Mr. Kirth stated it was 6 inches.

Mrs. Fortlage stated that the request seems to end at the end of the residence, and that was current residence.

Mr. Kirth agreed.

Mrs. Fortlage stated that there were plans that were associated in last month's request that involved building an addition that required additional variances. She asked what was going on there.

Mr. Kirth stated that they believed they were not going to push for that additional variance. He stated that in the addition part, they were reconsidering asking for another variance.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mrs. Fortlage asked if Mr. Kirth was still putting an addition on the house.

Mr. Kirth replied yes.

Mrs. Fortlage asked if Mr. Kirth was expected to do it within the code.

Mr. Kirth agreed.

Law Director O'Brien stated that the second variance on the application they were removing it, withdrawing it.

Mr. Kirth stated that he believed so. He didn't see the reason that they have to push that extra foot. They could make changes.

Chairman Moreal asked Mr. Kirth if the structure had changed, the height, the length?

Mr. Kirth stated that earlier they had discussion in the ARB that they were going to lower the roof and straighten it out a little bit better to where it was a little lower and add in a couple of windows on the long back side of the wall or a brick detail.

Mr. Bredt asked Mr. Kirth if he would foresee any time in the future where they would park a vehicle between the 2 houses?

Mr. Kirth stated he did not. He stated that he grew up in a small bungalow, and he knows what Mr. Bredt was talking about. He stated that was not his intention.

Chairman Moreal stated that Mr. Kirth's intention was to use the drive to get back to the addition a couple of garages in there. He stated at this point Mr. Kirth did not park in the garage he has now.

Mr. Kirth stated it was more of a mechanical room. He stated that it was not ideal for parking a vehicle in there. It won't fit the bigger vehicles. He stated that he would really like to clean up the front yard and not have vehicles up front. He stated that they have a beautiful front of their house; and they would really like to get the vehicles in the back. He stated that was their intention to use the garage and park in the garage and in the back.

Chairman Moreal stated that he thinks what the Board was struggling with was all the lots were the same width. Mr. Kirth's footprint of his house was pretty wide in relation to all the other ones on the street. He stated that was what was making it the toughest to get a driveway around and not be so close to the house next to them and so close to the property line. He asked Mr. Kirth if he could understand the Board's thinking. He stated that he heard it last month. He stated that was where the Board was he believes. He asked everyone else on the Board.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mrs. Fortlage stated that she would say that 11 inches, which was all that was suggested even though 12 inches was in the official request, was not enough for building or maintaining that driveway, much less using it. She stated that the house was suitable for living in, not suitable for becoming an enormous place with vehicles passing along there. She stated that she could not see a practical difficulty as it was defined in *Duncan v. Middlefield*.

Law Director O'Brien stated that he would suggest if the applicants would need to provide any additional information, if there were any neighbors, which there weren't, then close the hearing and discuss reasons for the variance request or reasons why the Board would not be in favor of the variance request and then take a vote.

Mr. Bredt stated that he wanted one final clarification before the Board closes the discussion. He asked if they do have a current survey on the property?

Mrs. Kirth stated that they did, and they could supply that.

Mr. Bredt asked when the survey was done.

Mrs. Kirth stated that it was done within the last 6 months.

Mr. Bredt stated that the Board did not have it last month either.

Mrs. Kirth stated that she didn't supply it, but she could supply it.

Chairman Moreal stated to Mr. Bredt that it was a good question because he knows that the Board has gone from somebody saying it was 9 feet, somebody says 10 feet, the neighbor's house was 5 feet away or 6 feet away. He stated that it was so tight that the Board would like to have all the right dimensions, at least for the record, and what they were looking at and voting on.

Mr. Kirth stated that he understood that. He stated that he did run that line. It was winter time, it was hard to see, but he did it on a fairly clear day before the snow fell and took the measurements. He stated that if he just measured between the 2 homes, they were 16 foot 2 inches, and he just ran the line. He ran it from the front to the rear, and that was how he ended up coming up with that line. He stated that if the Board would need the surveyor to actually do it rather than Mr. Kirth, he assumes they could reach out to him and have him do that.

Chairman Moreal stated that Mr. Kirth stated 16 feet. He stated that earlier on he thinks he heard from the City, he talked to the Building Official, and he thought the number was 14 feet per the drawings.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Building Official Gero stated that per the documents that he found in the Building Department records, it showed that the house next door was 5 foot off the property line, and that the Kirth's home was 9 foot 3 inches off the property line.

Chairman Moreal stated that was a 2 foot difference.

Building Official Gero stated that those were not surveying records, those were records submitted for other applications. The record was submitted for a shed that they had in their backyard. The neighbor's house was submitted for a garage that they built. So, that was based upon the best information that he had to work with. He did not have the survey. If they had the survey done 6 months ago, he doesn't know why it wasn't submitted as part of the original application for the home addition and the 3,500 sq. ft. addition plus the driveway location.

Mrs. Kirth stated that when she asked about it, Debi had said that she didn't think it was necessary. If it was necessary, she would be more than happy to supply it, and she also thinks it might be helpful, and she didn't know if they typically would do this, but the Chairman had mentioned for them to pull that line. She stated that they could physically look at it together so they could see and he could understand where they were coming from. What they were seeing was that the neighbor's house was 6 foot 4 inches off the line.

Law Director O'Brien stated that he could help the applicants. They were requesting a very specific variance. They were requesting a variance of a 22 foot driveway, 20 foot permitted and 22 foot requested which will be at least 1 foot off the property line, based upon their survey. So, that was the request to the Board. He stated that let's assume the Board would approve it, they would not be able to build it without a surveyor surveying the line; and them confirming with the Building Department that they would be at least 1 foot off the line.

Mrs. Fortlage stated that 11 inches was not 1 foot.

Law Director O'Brien stated it was 1 foot.

Building Official Gero stated that they were off the line a foot, whether the driveway was 9 feet or whether it was 8 foot.

Law Director O'Brien stated that Mrs. Fortlage was referring to Mr. Kirth's comment into the record that they were requesting 1 foot, but when Mrs. Fortlage was questioning him, it turned out to be actually 11 inches. He stated that it would have to be 1 foot, that was the request; so if the variance would be approved by the Board, it could not be 11 inches, it would have to be 1 foot. He stated that Mr. Kirth didn't need the survey to make a decision because if the Board would approve it, the Building Department will not let them build a 22 foot driveway closer than 1 foot to the side yard line as established by a legal, licensed surveyor.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mr. Monteleone stated that he did have one question before anything would get closed. He stated that he was a little confused, and he apologized. He asked if the 9 foot driveway, and he believed that there was 1 foot left over plus the 11 inches from what he understand. He stated that he could be totally wrong, but that was what his mind was telling him what they have been talking about. He stated that he would need some sort of clarification before he could make a decision, if they do have to make a decision. He asked if it was 1 foot 11 inches? Or was it 11 inches?

Mr. Kirth stated that if you were to measure between his brick and the line, you would be 9 foot 11 inches; so what Mrs. Fortlage was saying and the Building Official, he has to be 1 foot from that line which would make it 8 foot 11 inches, as long as he doesn't go over any more than that 1 foot in that side yard line.

Mr. Monteleone stated that even if he had to go to 8 foot, it would get him into a situation where he would have the 1 foot 11 inches, correct?

Mr. Kirth agreed. He stated 8 foot 11 inches.

Law Director O'Brien stated to Mr. Kirth if he understood it correctly, and then he can assist Mr. Monteleone, was that the portion of the driveway that was between the next neighbor and his residence would be what dimension if the variance was approved.

Mr. Kirth stated that the Law Director broke up a little bit.

Law Director O'Brien asked what will be the width of Mr. Kirth's driveway if his variance was approved between the section between Mr. Kirth's house and the next door neighbor?

Mr. Kirth stated that 1 foot 11 inches if he was 1 foot off the line.

Law Director O'Brien stated that the variance that Mr. Kirth was requesting was actually 2 separate variances. He was requesting a 22 foot driveway behind the house.

Mr. Kirth replied no. He stated that he thinks that what the Law Director was getting it at there when he was digging into it was he was trying to do 1 more additional foot to the left of his driveway if you would be facing the house; so that way if there was a vehicle that came in for visiting, if they got out of the vehicle, they could step onto concrete.

Law Director O'Brien stated that the 22 foot would be in the front of his house.

Mr. Kirth agreed. He stated that was where they were incorporating that. He stated that he could probably give a little bit there. He stated that if it would be that much of a concern, he could give there. It would not be a must.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Law Director O'Brien stated that he understood. He stated to Mr. Monteleone that the answer to his question was they were seeking a 22 foot driveway which will result in it violating the side yard setback; and so that's why they want to be 1 foot off the side yard. He asked if the applicants agreed with that?

Mr. Kirth stated that he believed he was understanding the Law Director properly, yes.

Law Director O'Brien stated that the approval of the variance would result in allowing a 22 foot width driveway 1 foot off the property line when 3 foot would be required.

Mrs. Fortlage asked if now they would close comments?

Chairman Moreal stated that if the applicants had nothing else to add, the Board will close public comment that they could not come back in.

Mrs. Kirth stated that she just wanted the variances to pass. She asked the Board if any of them feel as though providing a survey and visiting the property with them to visually see and understand this more would be something that they need, or have their minds been made up?

Councilperson Walchanowicz stated that he would like to see a survey, and maybe have the surveyor come out and string a line just so the Board knows it was done by a surveyor and it was exact. He stated that to him it would be in their best interest to table it until next month, get the Board the survey, let the Board see the exact dimensions.

Mr. Kirth stated that they could do that.

Chairman Moreal stated that he didn't have a problem with that. He was on the Board 7 years ago, and he voted on the driveway. He stated that at the time it was just a driveway, the Board didn't know what would be going on in the back. So, all of it would come into play. He stated that the numbers had been changing back and forth, and he could see the confusion with other members. Now the Board hears that there was a survey. A survey would be nice, and not by the Kirths stringing a line.

Several people began speaking at once.

Mr. Kirth stated that if the Board would feel more comfortable with a guy to come out and do that rather than just Mr. Kirth telling the Board, he doesn't have a problem.

Councilperson Walchanowicz stated that for the Board it would be more actual or more because you never know. They may gain an extra inch or 2; at least the Board will know it will be dead on. It would help.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

Mr. Kirth stated that it would make him feel better that everyone will be going into this saying he knows this is where they are, and this is where he needs to be; and it would make him more comfortable too that everyone was all on the same page. He stated that he has no issue with that at all.

Mrs. Fortlage stated that she wanted to remind the applicants that the Board was not asking them to do certain things. They were not designing the issue. They were deciding on the applicants' request. So, the applicants need to decide what the request would be, and the Board would determine whether they could grant it. That is the way it would work. The Board was not advising them to do turf stone, they were not advising them to put it in a certain place, it was the applicants' request and the Board's decision.

Mr. Kirth stated to Mrs. Fortlage that it was not a problem. He only mentioned doing all turf stone because again it was under the under carriage; and if they go back to that, it might make more sense to do that all there on the side where you couldn't even tell it was a drive. He stated that was why he mentioned it.

Mrs. Fortlage stated that she gets it. She understands that they have come more than many people, but most people do not have much experience with this, and that's understandable. She was just hoping to add clarity with her comment.

Chairman Moreal stated that he was going to go on Councilperson Walchanowicz's comment as far as tabling the matter because it was tough on his end looking at this. He would rather table it.

Mr. Kirth stated that the Chairman wanted to be sure with the survey, and he doesn't disagree with the Chairman. He stated that there were many jobs and many things that he does that sometimes you need a little more clarification to make sure that you are going the right way. He stated that he has no problem with that.

Chairman Moreal stated that on that note, he wanted to make a motion to table.

Mr. Monteleone stated that he wanted to second it.

A motion was made by Chairman Moreal, seconded by Pasquale Monteleone, to table the matter.

**ROLL CALL: Yeas: Moreal, Monteleone, Bredt, Walchanowicz, Fortlage
 Nays: None
 MOTION CARRIED**

Mrs. Kirth wanted to ask a quick question. She stated that once the survey would take place, and the line would be pulled, how would that work? She asked if the Board would make time to

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

come out to their property to see that? She stated that it was not something that they did all the time. She stated that the Board knows about these things better than they do. They were just trying to understand what they may need here, and they were trying to make it work.

Councilperson Walchanowicz stated that the sooner they get it done, the sooner that they let Debi know, that she could e-mail the Board that it has been done.

Mrs. Kirth stated that she had the survey done. She just needed to go back to her guy and figure out what would he need. She stated that the stakes that were in the ground.

Mr. Kirth stated that they will have the surveyor come out and stake the property.

Mrs. Fortlage stated that she wanted to say something. She stated that she would prefer that once the surveyor has given the official this is really where the line is with staking, that either Don Ramm or Mike Gero interpret that for the Board and tell them what they were really working with based on the request rather than the Board coming out there. That would not be as helpful as one of those two who will have to inspect it and improve it, telling the Board what the facts were with the professional surveyor's input.

Mr. Kirth stated that when they spoke earlier, he assumed that he would have on paper for the Board and have him come out and put the stakes out. He didn't verbalize it, but he assumed that was what the Board would want.

Mr. Monteleone stated that he would appreciate the written report, and then a visual. Then they could let Don Ramm and Mike Gero know, and the Board could drive by if they wanted to.

Chairman Moreal stated to the applicants that just so they would know, the Board has done it before with other applicants over the years. He stated that them doing the survey would be great, it would help the Board. He stated that it would not mean that the Board would be voting yea or nay on this; just so they know.

Mr. Kirth stated that he just thought the Board needed more clarification to make sure that the applicants were working within their limits.

Several people began speaking at once again.

Mrs. Kirth stated that the Board thought the house was 5 foot off the line, and it wasn't. She does understand, and she thinks it will help bring clarity for everyone.

Building Official Gero stated that he was going to interject based on Mrs. Fortlage's comment regarding Don Ramm or himself. He stated that neither Don Ramm or himself were professional

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

surveyors. So, he believes the surveyor should stake the lot and provide distances to the adjoining structures on the lot.

Mrs. Fortlage stated that she would appreciate the Building Official being the person who interprets those to the Board.

Building Official Gero stated that when they receive the document, the document will be like any other site plan showing the locations of the structures to the property line; and then they will be able to make that determination.

Mrs. Fortlage stated that she was only asking for the same thing that they would have done as the inspector when it would be over. Did it meet the requirements?

Mrs. Kirth asked if she should turn the survey into Mike and Don or where should she send it?

Building Official Gero stated that Mrs. Kirth could send it to Debi when she gets the document. He wanted Mrs. Kirth to make sure that the property lines were staked out, and also they should make sure that the surveyor would have the dimensions on the drawing as far as how far away the structures were. He stated that then they will go from there. He stated that the survey should also include, they will need a full survey of the 2 lots to be able to consolidate them.

Mrs. Kirth stated that she had that.

Building Official Gero stated that they could have a pin survey, a stake survey for the addition, the 85 feet down the one property line, and then the rear of that. He stated that the surveyor could stake out everything, but the surveyor should be the one providing the numbers to the Board, not Don Ramm or the Building Official trying to determine it off a string line.

Mr. Kirth stated that he just put the string line in earlier because the Chairman requested something.

Building Official Gero stated that was fine, but since the Board has taken the next step and taken the matter to a higher level, they need to have the professionals do what they need to do.

Mrs. Kirth stated that she had a professional surveyor who performed it.

Councilperson Walchanowicz stated that he wanted to reiterate what the Chairman stated about voting yes or no with survey; so he just doesn't want hopes to get up. It is evidence or information that he would like to see. He thanked the applicants for providing that to the Board.

The Chairman stated that the Board tabled the matter, and they will be in attendance next month.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
February 18, 2021**

A motion was made by Carol Fortlage seconded by Pasquale Monteleone, to adjourn the Board of Zoning Appeals meeting of February 18, 2021.

**ROLL CALL: Yeas: Fortlage, Monteleone, Moreal, Brett, Walchanowicz
 Nays: None
 MOTION CARRIED**

There being no further business, the Board of Zoning Appeals meeting of February 18, 2021 was adjourned at 6:40 p.m.

Chairman Mark Moreal

Debi Beal, Secretary

Minutes Unapproved at Time of Release 02/22/21