

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
May 21, 2020**

AGENDA:

Old Business:

Approval of Minutes of Regular Board of Zoning Appeals Meeting held on April 16, 2020.

New Business:

- 1. 6436 Poplar Drive, Terry Boylan** – Requesting a variance to 1143.02(b)(2)B of 496 sq. ft. to permit an accessory building to be 640 sq. ft. in size (144 sq. ft. permitted, 640 sq. ft. requested).
- 2. Daisy Blvd. & Aster Drive, Daisy May LLC & Timothy Lee, Phase 1** – Requesting a variance to 1163.03 of 57 feet for Sublot 1 to permit the average total lot width abutting the dedicated street to be less than 60% (82 feet permitted, 25 feet requested) and a variance of 188 feet for Sublot 2 (218 feet permitted, 30 feet requested).
- 3. Daisy Blvd. & Aster Drive, Daisy May LLC & Timothy Lee, Phase 2** – Requesting the following variances:
 - A. A variance to 1163.03 of 24 feet for Sublot 7 to permit the minimum lot width to be 76 feet (100 feet permitted, 76 feet requested);
 - B. A variance to 1163.04 for Sublots 5,6,8 and 9 of 10 feet to permit the building setback to be 65 feet (75 feet permitted, 65 feet requested);
 - C. A variance to 1163.03 of 57 feet for Sublot 1C to permit the average total lot width abutting the dedicated street to be less than 60% (82 feet permitted, 25 feet requested); a variance of 15 feet for Sublot 8 (45 feet permitted, 30 feet requested); a variance of 16 feet for Sublot 9 (81 feet permitted, 65 feet requested);
 - D. A variance to 1165.02 of 15 feet for Sublot 5 to permit the minimum rear yard width to be 40 feet (55 feet required, 40 feet request); a variance of 18 feet for Sublot 6 (58 feet required, 40 feet requested); and 50 feet for Sublot 7 (90 feet required, 40 feet requested).

The virtual meeting was called to order by Chairman Mark Moreal at 5:30 p.m. and the following responded to Roll Call:

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

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 asked if there was any attendee waiting on Items 2 and 3, Daisy May, LLC. That applicant has been withdrawn from the meeting. The Chairman stated that he just wanted to give everyone a heads up.

Mrs. Fortlage asked if it was a postponement or the applicant did not need a variance.

Law Director O'Brien stated that the applicant came before the Planning Commission at the beginning of the month; and although it was a revision because of the changes, everyone felt comfortable scheduling the matter for Public Hearing for the June Planning Commission meeting. A Public Hearing was scheduled, and during that meeting and prior to the Public Hearing, the Law Director made a comment by saying because they needed to go to the Board of Zoning Appeals. He stated that sometimes applicants will come before the Board of Zoning Appeals, and if they need to go to the Planning Commission subsequently, and the Zoning Board will do it contingent upon approval by the Planning Commission. The Law Director stated that he just made that comment. The Building Official interpreted that as they were coming before the Board of Zoning Appeals. He stated that he understood why the Building Official put them on the agenda.

The Law Director stated that it was discovered that the applicant did not mind coming. They were on the agenda and prepared to attend; but when the Building Official and he spoke this morning, it was discussed what would happen if during the Public Hearing that the plan was changed and didn't need the variances or different variances. The applicant would have had to come back to the Board of Zonings, and they didn't want to have two meetings for one applicant. The applicant was called and told that there may be a risk that they may have to come back based upon what happens at the Public Hearing, and they agreed that they would want to come before each body one time. They have withdrawn.

Chairman Moreal stated that he would ask the Board if there were any corrections, changes or additions to the April 16, 2020 meeting.

Mr. Bredt stated that he had one correction. He stated that with the first time with the Roll Call he was marked present, and then he was marked as abstaining from the approval of the Minutes.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

Mr. Bredt stated that he did not abstain from approving the Minutes, and he was there. The Secretary made note of it.

A motion was made by Pasquale Monteleone, seconded by Councilperson Walchanowicz, to approve the April 16, 2020 Minutes.

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

6436 Poplar Drive, Terry Boylan – Homeowners Terry and Nancy Boylan were both in attendance and sworn in.

Chairman Moreal asked the Secretary if all of the adjoining neighbors notified. The Secretary stated that they were notified. There were no neighbors in attendance.

Chairman Moreal asked Mr. & Mrs. Boylan to state why they would need the variance.

Mr. Boylan stated that they have a large yard and have some big mowing equipment and some toys that were sitting in their garage. He stated that it doesn't allow them to park their cars in the garage. They were looking at building an accessory building to put all of their equipment and toys back there so they could park their cars in their garage.

Chairman Moreal stated that before he goes any further. He stated that Mr. Boylan has two lots. Mr. Boylan agreed. The Chairman stated that Mr. Boylan was in motion to consolidate the two parcels. Mr. Boylan agreed. They were separate lots. The Chairman stated that the shed would be going on the rear lot. Mr. Boylan agreed.

Mrs. Boylan stated that they currently have a shed, and they will be replacing that shed. The Chairman asked if the existing shed would be removed. Mr. Boylan stated that it would be removed.

Mr. Monteleone stated that was one of his questions to see if the other shed would be removed. Mr. Boylan stated that it would be coming down.

Chairman Moreal stated that he wanted to applaud Mr. Boylan on a nice packet. There was a lot of information included which was nice. The Chairman stated that there would be two overhead doors, a man door and windows on the new shed.

Building Official Gero stated that the applicant will still need to appear before the Architectural Board of Review even though the Chairman was describing the new structure.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

Chairman Moreal asked if the height was going to be 9 feet at the highest point. Mr. Boylan agreed. Councilperson Walchanowicz asked if it was ceiling height or roof height. Mr. Bredt stated that there would be a 6/12 pitch on the roof. He stated that the roof would be 9'6" as stated on the application. Mr. Boylan agreed.

Mr. Monteleone asked if there was any heat or water going to the new shed. He also asked if there was going to be electric. Mr. Boylan stated that there was current electrical out to their existing shed. They were going to do the same thing for an outlet and for some lights. He stated that was what was currently in the existing shed.

Law Director O'Brien asked Mr. Boylan if he already consolidated the two parcels. He asked if Mr. Boylan received approval from the Planning Commission. Mr. Boylan stated that they were on the agenda for the next Planning Commission meeting in June. The Law Director asked the Chairman if the Board entertained a motion, that it would be made contingent upon the properties being consolidated.

Chairman Moreal stated that Mr. Boylan's backyard was pretty wide open. He asked if Mr. Boylan would be okay with doing some shrubs or arborvitae or something to screen from the neighbors behind him in Chestnut Creek. Mr. Boylan agreed. The Chairman stated that he did not know how far Mr. Boylan was from the rear yard. Mr. Boylan stated it was about 25 feet. There was also a creek back there. Mr. Boylan stated that there were already trees and some vegetation back there. The Chairman agreed.

Mr. Bredt asked about the pallets located at the rear of the property. He asked if they belonged to Mr. Boylan. Mr. Boylan stated that they were his. Mr. Bredt asked if Mr. Boylan was going to get rid of the pallets. Mr. Boylan stated that he was going to get rid of the pallets.

Mrs. Fortlage stated that the request was for a building more than triple the size that would be permitted. She stated that was a pretty darn significant variance. She asked why did the building need to be so big. Mr. Boylan stated that they purchased some things over the years like four wheelers. They have a commercial mower and rototillers and some bigger tools that are being stored in the garage and the shed. He stated that they can't park their cars in their garage, so they were looking for something to house everything so they could use their garage as it was intended.

Mrs. Fortlage stated that it still seemed like it was a lot of space for what Mr. Boylan described as the contents. Mr. Boylan stated that he left a little bit of room for growth in case they would buy something that they would need to store out there.

Chairman Moreal asked Mr. Boylan if there would be something stored in there that would be long in length that he would be looking for the 40 feet. The Chairman stated that he understood the square footage he was looking for, and maybe the Board believes that was pretty wide at 40

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

feet in lieu of 30 feet by a bigger depth. He asked Mr. Boylan if that was something he would entertain. The Chairman stated that he didn't really have an issue. He stated that he understood all the odds and ends, and the four wheelers. He was just trying to think it out a little bit.

Mr. Boylan stated that he could make adjustments to the depth and the width to make it work. He stated that was not a problem.

Chairman Moreal stated that he was not looking for Mr. Boylan to lose footage; he was just thinking if there was a way. He wanted to ask Mr. Boylan if the shed would be a kit. He asked if it was a pre-fabricated shed. Mr. Boylan stated that it was not pre-fabricated.

The Chairman stated that Mr. Boylan has a wide enough yard. The other shed will be coming down. He stated that he was throwing some ideas out there. Mr. Boylan stated that if it needed to be a 20' x 30', he didn't have a problem making those numbers work.

Chairman Moreal stated he wanted to see what the other Board members' thoughts were.

Mr. Bredt stated that he concurred with Mrs. Fortlage that it was an awfully big replacement for an existing shed for just stored materials, especially if Mr. Boylan lived there for any length of time, and he knew of the restrictions that were in effect. He stated that he did not see a practical difficulty in the application. He stated that having said that, the size of the lot, the consolidation of two lots make him more amenable to the variance. He stated that he would like to see the elevation reduced by 4 or 6 feet; and he would think 4 or 6 feet because the trusses were shown 2 foot on center. So, that would be an easy reduction in width. He stated that if Mr. Boylan was to go deeper, his trusses would get larger so they wouldn't be saving him any money which he would like to show some savings on top of everything else. He stated that he would feel much better if that was 6 foot less, 34 or 36 feet on the street facing elevation.

Mrs. Fortlage stated that she would like Building Official Gero to speak about the garage versus shed issue. She asked him to please remind them of the difference, and why it was called a shed and not a garage.

Building Official Gero stated that garages were to store vehicles in, sheds were to store equipment, utility things and things like that that would be used on the property. Mr. Boylan wouldn't be storing any vehicles in there, so it wouldn't be a garage.

The Chairman stated that it was not to say they couldn't store a vehicle in it one day if they would apply for a garage; and they put a vehicle in there. Was that how it was written in the code?

Mr. Bredt stated that to further the discussion, if it would be approved as a shed with a variance; then in theory no vehicle could be parked inside that shed. He stated as the Building Official had explained, it was defined by what the interior use of equipment versus motor vehicle. He stated

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

that he wanted Mr. Boylan to understand that if that reading was accurate, he has no reason to think so; he would not be allowed to park a car back in there, and he didn't show any drawings showing a driveway or anything like that. Mr. Bredt stated that he was just getting it on the table.

Councilperson Walchanowicz asked if the building would be all steel. Mr. Boylan stated that it was not. He stated that the roof would be metal, but the sides would be a wood structure with vinyl siding. Councilperson Walchanowicz stated that it stated 40 year steel panel siding. Mr. Boylan stated that they had a conversation with someone from the City, and they responded back that they would make it vinyl siding.

Mrs. Fortlage stated that she misspoke earlier when she stated it was triple, it was more than quadruple the allowed size of 144 sq. ft.

Councilperson Walchanowicz asked the Building Official if Mr. Boylan would have just went for a 24' x 36' garage, would he had to have gone through the variance and all that if he put up a standard garage.

The Chairman stated that he didn't think so.

Building Official Gero stated that he would have to make sure that he had a concrete floor in there, not a pad, but a floor for the garage. Mr. Boylan stated that if he would change his dimensions and put a concrete pad in, which he was planning to do anyway, could it be a garage. The Building Official stated that Mr. Boylan could use it as a garage. It would be considered a garage when they park passenger automobiles inside.

Law Director O'Brien asked if the other garage on the property attached or detached. Mr. Boylan stated that it was attached.

Councilperson Walchanowicz stated that he would just wonder what would look better, a 24' x 36' garage with a concrete base or a long 40' structure behind the house.

Chairman Moreal stated that he looked at it as it would be 40' in lieu of 36'; but like Mr. Bredt mentioned, a 24' x 36', he would have a higher roof line. He would have to have a higher roof line. The Chairman stated that at this point, the 16' x40' was not that bad for the neighborhood if you would look at it that way. The Chairman stated that he didn't have an issue either way, but he knows that it was on the table now. He was just throwing that out there.

Councilperson Walchanowicz replied that he didn't know if Mr. Boylan thought of those options.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

Mrs. Fortlage stated that she was not sure that was the Board's bailiwick, that would be the Architectural Board. She stated that she was still not hearing a practical difficulty. She stated that a key reason to grant a variance that there was a practical difficulty which could be mitigated by the approving of a variance. She stated that there was no practical difficulty other than wanting a big building on his property. She stated that the variance was very significant. It probably would make a change in the neighborhood since there were not a whole bunch of big ones right there by Mr. Boylan's yard. She stated that those were some thoughts.

Mr. Boylan stated that he looked down the street and there were 3 or 4 of them that were considerably taller than his, they might not be as wide. He was throwing that out there as well because he checked the neighborhood. He stated that he wanted to stay in line with what had been approved.

Chairman Moreal stated that he mentioned a few things about options with the garage and the shed. He stated that he got what Mrs. Fortlage was saying, but he wouldn't have an issue with a 16' x 40' shed at 9' high as opposed to a 24' x 36' garage with a higher roof line which he would be allowed to do without coming to the Board. He stated that he was okay with the garage. He stated that the height would play a big key on something standing out in the backyard. He stated that he would be okay with the shed as requested.

Mr. Monteleone stated that he agreed also.

Mr. Bredt stated that he was more inclined to look at it as an overly oversized building. He stated that he has seen again larger sheds, and Mrs. Fortlage made a good point with it being four times as large what was permitted. He thought it was pretty significant.

Councilperson Walchanowicz stated that approving a shed of this size, would that be setting a precedent for future residents coming to the Board to build these massive oversized sheds instead of doing a 24' x 26' garage which Mr. Boylan wouldn't even have to come to the Board.

Law Director O'Brien stated to Councilperson Walchanowicz that you would invariably get a neighborhood who want to put in a similar garage, someone in the neighborhood to say that the applicant has this size garage, so therefore, the Board should approve his or hers. He stated that it would not work that way in the zoning laws. He stated that the Board would not set a precedent. There was no precedent by granting this variance. The Law Director stated that every application rests on its merits. Having said that, if 12 identical houses with identical topography, with identical settings, everything identical; and the Board granted 9 identical variances and denied the 10th identical variance, then the Board may have an issue; but beyond that very unique fact pattern, the answer would be no.

Councilperson Walchanowicz stated that he was just asking questions.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

Mr. Bredt stated that it seemed for like the last six months, and probably even longer than that, the Board has gotten more applications for overly grandiose accessory buildings, whether it would be a shed or whatever; and the Board is spending an awful of time reaching out for the applicant to give the Board the practical difficulty to justify it; and the Board is not seeing it.

Mr. Monteleone stated that the Boylans do have to park their cars outside. He did notice that when he drove by. He stated that both cars were parked outside when he drove by.

Mr. Bredt stated that when people buy more things than their original purchase suggested was reasonable; that was a decision that they have to confront as they go down through the ages. He stated that they moved into everybody wanting a lot of toys as someone else had said before. He stated that he thought this was a scenario where the zoning law would need to be amended or changed as opposed to constantly coming to the Board with buildings twice as large, three times, four times as large as what their forefathers originally deemed was appropriate.

Chairman Moreal stated that was a good point because like he and Mr. Bredt, when they grew up, they didn't have what everybody has today. He stated that as parents they do the same thing; everybody has more and more and more. He asked if it was right or wrong? He stated that is the way it is. He stated that he does the same thing. He stated he didn't know what was right or what was wrong.

Mrs. Fortlage stated that they know that they have a code to go by, and they have a guidance under practical difficulty; and under those things, this request does not meet any reason for granting it. She stated that as Mr. Boylan could tell, she was not in favor.

Chairman Moreal stated that like he had stated earlier, the square footage of it he was okay with. He stated that if the 40 foot could be reduced; he was okay with the square footage if it could be arranged in a different way, it might make everybody else happy. He didn't know. He stated that he knows what Mr. Boylan's other option was also. He wouldn't have to come before the Board. The Chairman stated that he was trying to work with Mr. Boylan tonight and get this thing passed through; but everybody has to be on board.

Mr. Bredt asked the Law Director if the application for the variance would be denied, would that preclude Mr. Boylan from coming back with an application for a building permit for a garage?

Law Director O'Brien replied no, but Mr. Boylan would have to meet, there were other matters that the applicant would have to address. He stated that Mr. Boylan would have to put in a driveway, a dustless surface, something that would connect since you can't drive across grass on an automobile. There would be a lot more expensive that the applicant should be aware of then just the flooring. Mr. Boylan could go over that with the Building Official if he would like.

Mr. Bredt asked relative to the driveway, another issue with the current Building Codes would be it would need to be concrete or asphalt; and yet the green movements, the County and brand new

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

developments outside of the area were going with permeable designs which were very simply what was built 40 or 50 years ago, crushed stone, permeable pavers, things of that nature.

Building Official Gero stated to Mr. Bredt that the code did not say it would have to be concrete or asphalt, it would just have to be a smooth, dustless service. He stated that pavers would be an acceptable driveway.

Mr. Bredt asked if they could be the grass growing pavers?

Building Official Gero stated that whatever the homeowner would like to put in.

Chairman Moreal asked the Building Official as far as dustless surface to a garage, would it be only if you would use the garage as a daily parking space, if you would move cars in and out daily?

Building Official Gero stated that the take on that was if you don't have a driveway, and you have a large building in the back that you would be storing vehicles in; and you would use it every day, you would create ruts. You would create a problem, and it would be cited because you weren't maintaining the yard as installed. You would have to put something in like pavers, asphalt, concrete, whatever it is. He stated that if you were using that garage just to store vehicles in on occasion, and there was a recent case where he thinks that was brought up, as long as it would not create a nuisance, and the neighbors wouldn't be looking at ruts or worn out patches of grass from vehicles passing by. If you move a vehicle once or twice a month, you would not create a problem. If you would use it every day, that would create a problem.

Chairman Moreal stated that answered his question. That was what he thought too.

Mr. Boylan asked if it would make a difference if he cut his shed down 4 feet to get it to the 36' and go 36' x14' and try to get it closer to the garage setup dimensions?

Chairman Moreal stated that Mr. Boylan knows his take. He has made it public. He mentioned that because he thought it might help with the members maybe. He stated that he would like to get Mr. Boylan something tonight to move forward.

Councilperson Walchanowicz asked Mr. Boylan if he contemplated a garage over a shed?

Mr. Boylan stated that he didn't even think of that because there was a shed built back there, and he just thought he was replacing a shed with one he was taking down. He stated that a garage never crossed his mind. Mr. Boylan stated that he would have to look because he didn't think there was enough room on either side of his house where his neighbor was to get a drive back there. He stated that now that he knows what the rule was from the City.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

Chairman Moreal stated that it would only be a drive if it would be used on a daily basis to store a vehicle in there and take it out like the Building Official stated once a summer, twice a summer, that would not be an issue.

Councilperson Walchanowicz stated that the only reason they were asking was if Mr. Boylan was going to use it for what he was saying he was going to use it for, he wouldn't need a drive, and he wouldn't have to worry about a variance for a garage.

Chairman Moreal asked the Building Official what would the roof height be on a 24' x 36' garage?

Building Official Gero stated that he couldn't go any higher than 15 feet without approval.

Chairman Moreal stated that the Board sat and talked about a garage; he would put a 24' x 36' garage 15' high. He stated that as a neighbor or anybody, would you rather see that back there, and he knows that Mr. Boylan would be able to do it without asking. Mr. Boylan was asking the Board for a variance for a bigger accessory building at 40' in length, 16' wide, 9' high. It was a big structure back there if he would go to the garage. The Chairman stated that he was more inclined to, even though Mrs. Fortlage doesn't think Mr. Boylan has shown a practical difficulty, which really anybody who comes before the Board for a shed, it was just that they have too much stuff. They all know that. That was the answer that everybody gives the Board, and they still say the same thing.

Mrs. Fortlage stated that it was not a practical difficulty, and it was not the role of the Zoning Board to resolve the issue for the applicant or change their petition. That was not the Board's job. She stated that the Board has an assignment, and it was not to redesign a building.

Chairman Moreal asked if there was anybody else who had anything. He asked the applicant if he had anything else.

Mr. Boylan stated that he could make some adjustments if needed to make the Board happy. He stated that he would like to keep it, but if they need to do something different, then they will do something different.

Chairman Moreal asked the Law Director that the request was for a 640 sq. ft. variance, that was what was written on the application. He asked if it would run with the dimensions? If Mr. Boylan asked for a 640 sq. ft. variance, and the Board approved that; the Secretary stated that the variance was for 496 sq. ft.

Councilperson Walchanowicz asked if he did the math right on a 24' x 36' garage, the square footage would be 864 sq. ft.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

Mr. Monteleone stated that the 640 sq. ft. wasn't that bad as it was just 16' wide; it was not very wide.

Mrs. Fortlage stated it was four and a half times what would be allowed, that was pretty big.

Mr. Bredt stated to Mrs. Fortlage's point, he agreed. He stated that there was an application for one size building, and the Board was starting to redesign it to something; and the neighbors don't know that they were talking about a building that would be deeper and taller. They would need to be advised of that before the Board could do anything. The Board would need to hear their comments.

Law Director O'Brien stated to Mr. & Mrs. Boylan, the comment of whatever would make the Board happy; he appreciated that, and he knows they meant it in all sincerity, but it was not what the Board believes, they were confined to the Code as written by City Council and confined to applying the practical difficulty standard by the Duncan v. Middlefield, the Ohio Supreme Court case. He stated that where the Board would stand personally wouldn't matter, they were just trying to follow within the confines of the law as directed by City Council.

Chairman Moreal stated that if that was it he wanted to make a motion.

A motion was made by Chairman Moreal, seconded by Charles Bredt, to approve the variance as requested, subject to the consolidation of the two lots prior to receiving a building permit to construct the accessory building.

**ROLL CALL: Yeas: Moreal, Walchanowicz, Monteleone
 Nays: Bredt, Fortlage
 MOTION CARRIED**

Law Director O'Brien stated that for the applicant, it would pass 3-2, and Mr. Boylan should check with the Building Official what the next step would be.

Mr. Boylan thanked everyone.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE, OHIO
May 21, 2020**

There being no further business, the Board of Zoning Appeals meeting of May 21, 2020 was adjourned at 6:04 p.m.

Chairman Mark Moreal

Debi Beal, Secretary

Minutes Unapproved at Time of Release 05/22/20