

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
July 21, 2022**

New Business:

**Approval of Minutes of Regular Board of Zoning Appeals Meeting held on
June 16, 2022.**

- 1. 7800 Brookside Road, St. Maron Church** - Requesting a variance to 1151.10 for the installation of a double-sided illuminated monument sign to be located within the 35' triangle in a U-1 residential district (not permitted).
- 2. 6855 Rosewood Circle, Thomas Goebel** – Requesting a variance to 1332.08(a) to locate a generator on the side of the existing dwelling (not permitted).
- 3. 7905 Stone Road, Joseph Cohara** – Requesting a variance to 1369.08 to permit additional time to abate the nuisances on the property.

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

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

**ALSO
PRESENT:** **Will Doyle, Assistant Law Director
Michael Gero, Building Official
Anne Lynch, City Planner**

ABSENT: **Councilperson Chris Walchanowicz**

Chairman Moreal stated that at this time he would like to ask the Board if there were any corrections, changes or additions to the June 16, 2022 meeting.

A motion was made by Charles Bredt, seconded by Pasquale Monteleone, to approve the Minutes of June 16, 2022.

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

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Chairman Moreal then proceeded to read the Board of Zoning Appeals opening statement.

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 undue 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.

7800 Brookside Road, St. Maron Church - Brett Smith was in attendance and sworn in, representing St. Maron's Church.

Chairman Moreal asked if there were any neighbors notified and any present.

The Secretary stated that the neighbors were notified, and there were no neighbors in attendance or on Zoom.

Mr. Smith stated that the City had the 35 foot triangle that the signs cannot be located in, and after visiting the site, the property actually starts to taper off right past the triangle. Mr. Smith stated

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that there was also a fairly large tree that was near the driveway. He stated that if they were to be outside of the 35 foot triangle, the bottom of the sign would start to get covered by ground and tree. He stated that the tree that was out there was fairly large.

Chairman Moreal asked Mr. Smith where the tree was in relation to the picture.

Mr. Smith stated that if they were to put the sign back there, the property starts to dip down, and then the tree would be in the way. Mr. Smith stated that the sign would be 21 feet off the roadway.

Mr. Bredt asked if the Board had seen the application about a year ago.

Mr. Smith stated that he thought they were confused on the setback in the right-of-way, and the Board was not sure they could approve it if it would be legally in the right-of-way. He stated that now it was out of the right-of-way, but they had the triangle issue.

Chairman Moreal asked Mr. Smith if he acted on it then.

Mr. Smith replied no.

Mrs. Fortlage stated that the Board also had somebody whose sign company just hands, and no questions were answered by the person representing the sign company.

Mr. Monteleone stated that he thought the sign would not be illuminated in a residential area. He stated that he knows the Board talked about it.

Mr. Smith stated that the letters would be lit.

Mr. Bredt stated that the sign would not be lit after 11:00 p.m.

Mr. Smith stated that was up to the Board.

Mr. Bredt stated that was one of the old points, but he was not against it. He stated that he wanted to clarify for the record that the illumination in a residential area would have to be controlled from dawn to dusk basically. He stated that dawn to dusk wouldn't work at Christmas time, so they could make it 11:00 p.m. or 10:00 p.m. He stated that not after 10:0 p.m. and not before 6:00 a.m.

Chairman Moreal asked Mr. Smith if they had events past that time.

Mr. Smith stated that he didn't think they did. He stated that he had been dealing with them quite often, and he didn't think they had anything going on.

Mr. Bredt stated that as far as the triangle, they had enough open space, not like a yard right next to you. He stated that was why he thought the variance was worth approving.

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Mrs. Fortlage asked if Mr. Smith had a feel for where the sign was relative to the temporary sign that was there?

Mr. Smith stated that the temporary sign was only like 3 to 5 feet off the ground.

Mrs. Fortlage asked how much farther back would this sign be.

Mr. Smith stated that they would be 21 feet from the road.

Chairman Moreal stated that it would probably 16 or 17 feet off from the back of the other side.

Mr. Smith stated that if you were pulling out, you would probably get a whole car from the back of the sign to the street. So, visibility would definitely not be an issue.

A motion was made by Charles Bredt, seconded by Pasquale Monteleone, to approve the variance for the sign to be located in the 35' triangle, subject to the illumination not being visible between 10:00 p.m. and 6:00 a.m.

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

6855 Rosewood Circle, Thomas Goebel – Homeowner Thomas Goebel was in attendance and sworn in.

Chairman Moreal asked if there were any neighbors present or on Zoom.

The Secretary stated that there were no neighbors on Zoom.

Resident Larry Gervasi of 6879 Rosewood Circle was in attendance also and sworn in.

Chairman Moreal stated that Mr. Goebel was before the Board for a generator on the side of the building. He asked Mr. Goebel to explain why he would need to put the generator in that location.

Mr. Goebel stated that the first reason was the people he hired to put the generator in would work properly for the size of the house. He stated that he wanted to be as close to the gas meter as possible. He stated that was where the gas meter was located on the property.

He stated that he was probably closer to his other neighbor in the back. He stated that he has a fence there. He stated that the generator would only be 26.6 inches high and 48 inches long and 25.1 inches wide. He stated that basically the trees in the picture would cover the front side. He stated that he didn't have a problem putting a fence around it.

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He stated that the generator would be for emergencies. He stated that it would not run all the time. He stated that he had two freezers and a refrigerator in the garage and the house. He stated that he buys in quantity.

Chairman Moreal stated that he did notice when he was there yesterday and talked to Mr. Goebel's wife. He stated that he did see that the existing air conditioner was on the side of the house. It was on the other side of the fence, so he questioned it at the time. He asked Mr. Goebel if he could put the generator on that side.

Mr. Goebel stated that he has three windows on that side, and eventually they want to put an addition on that side for his father-in-law to come live with them. He stated that was the area where he could put the addition on. He stated that the house was on a double lot, so it was at a much farther distance than a normal lot. He stated that it met all the other variances that were required. He stated that was where the gas comes in, and to run a gas line all the way around the other side would not make sense.

Chairman Moreal stated that the Board does have a lot of generators come before them from time to time. He asked how quiet the generator was. He stated that things change, and he has not heard one run.

Mr. Goebel stated that they were very quiet.

Mr. Monteleone asked if they test the generator once a month.

Mr. Goebel stated that it would actually go on by itself once a month.

The Chairman asked how long it would run when it would test.

Mr. Goebel stated that it would just be to make sure it was running. He stated that the generator would be enclosed and not like the motor would be outside. It would be a Generac. He stated that it was back-ordered. He stated that it takes a long time to get them right now.

Several people began speaking at once.

Mr. Goebel provided a picture of the generator.

Chairman Moreal stated that it was not much bigger than the air conditioner.

Mr. Goebel stated that it was probably quieter.

Mr. Monteleone stated that he would suggest that Mr. Goebel put some shrubs on the side.

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Several people began speaking at once again.

The Chairman stated that the generator was not as big as he thought, but that being said.

Mr. Larry Gervasi stated that his main concern, the reason that he was opposed to the variance was the noise thing. He asked if anyone knew how many decibels it was.

Mr. Goebel stated that it met the code from the City.

Mr. Gervasi stated that right now it was pretty noisy out there. He stated that Mr. Goebel had a big family, God bless him. There were a lot of people out at the pool a lot of the time. He stated that it was very, very noisy. He stated that his garage was right there. He stated that his daughter was special needs, and she has her TV in there. He stated that sitting at his kitchen table, he can hear the noise all the time at the pool. He asked what was he going to do. He stated that the baseline now was extremely loud, and generators were pretty loud. He stated that his main concern was that there would be a noise (inaudible). He stated that people were allowed to have generators, and they are supposed to put them behind their house. He stated that as he understood it, the reason to grant the variance was that the person would have to demonstrate a hardship.

Chairman Moreal stated a practical difficulty.

Mr. Gervasi stated that the house was over two lots. It was a big house, and he would think he should put it behind the house rather than the side.

He stated that the last time they lost power, he thought it was 12 years ago.

Chairman Moreal stated that then it would never be on.

Mr. Gervasi stated that unless you would use it for other issues. He stated that he could use the generator for running other things.

The Chairman stated that generators, the way they were hooked up is if the power goes out in the house they turn on through gas.

Mr. Goebel stated that the only use for it would be if the power went out.

The Chairman stated that you can't use it to power other things. He stated that was a misunderstanding. You can't use it to work in your backyard. You are not able to use it for anything but that. That was the way it was wired in. He stated that he knows that much about them.

Mr. Monteleone stated that they do test on their own.

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Mr. Bredt stated that it was 4 or 5 minutes.

Chairman Moreal stated that some of the air conditioners are louder than generators. They run all the time in the summer.

He stated that hiding the generator was always an issue, and again it's the sound. He stated that if Mr. Goebel would put shrubs more so than a fence, it would seem to absorb the sound more. He stated that the City Planner could jump in and say put some arborvitae or something that matches. He stated that it was only 26 inches high, it was a lot lower than he thought for a house that big.

Mr. Bredt stated something that the deer wouldn't eat.

Mr. Goebel stated that the generator would be outside the fence.

Several people began speaking at once.

Chairman Moreal stated that right now he was thinking that the Board could make Mr. Goebel buffer the generator with shrubs, and they should cover it. He stated that the last time they lost their power was 12 years ago. He stated that they lose their power more often.

Several people began speaking at once again.

Chairman Moreal stated that what Mr. Goebel stated earlier was that he had the air conditioner there, and he has two or three basement or side windows, and he wants to put an addition on. If he would put on an addition one day, that would even buffer it more.

Mrs. Fortlage asked if Mr. Goebel stated that the generator would go outside of his fence.

Mr. Goebel stated that it would be right there by the gas meter. It would be right by the downspout. He stated that if it would go on in an emergency, it will draw out all the gas to there, and that is what it needs to get the power to the generator. He stated that they do a schematic of how much power that you need. He stated that he didn't think you could have a huge gas line. He stated that they want it as direct as possible.

Chairman Moreal stated that right on the other side of the fence is Mr. Goebel's air conditioning unit.

Mr. Gervasi asked if there was a variance to put the air conditioner on the side of the house.

Mr. Bredt stated that was one large gate.

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Mr. Gervasi stated that outside the fence was more of an eyesore and more of a potential sound nuisance than inside the fence.

Chairman Moreal stated that the Board will definitely make Mr. Goebel buffer it.

A motion was made by Charles Bredt, seconded by Pasquale Monteleone, to approve the variance to allow the generator to be located on the side of the dwelling, subject to the City's review of the buffering that will be added in the location as applied for.

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

7905 Stone Road, Joseph Cohara – The applicant was not in attendance. Several neighbors were in attendance.

Mr. Bredt stated that in that the applicant was asking the Board to review on the demolition, they don't have to table the matter do they?

Assistant Law Director Doyle stated no, this could go on First Reading at the next Council meeting.

Mr. Bredt stated that the matter was such a slam dunk in his opinion, the cars should be taken away and get it done.

Assistant Law Director Doyle stated that he wouldn't treat this any differently than any other application. He stated that sometimes the Board does table those.

The Chairman stated that the Board never voted on anything ever that he could remember without the applicant being in attendance.

Mr. Bredt stated that was why he was asking because this was an appeal to an order that the City and Police Department have set out. He stated that if all Mr. Cohara does is never show up, that is something he could do all along.

Assistant Law Director Doyle stated that the process was pretty clear what the homeowner needed to do and where he needed to be at what time.

Mrs. Fortlage asked so the Board's role could be to simply deny the variance?

Assistant Law Director Doyle stated that the appeal was requested but not actually made. There was no one in attendance to present the appeal. Mr. Cohara did do what it stated in the Building

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Official's letter that he could do, what his rights were with regard to the ordinances by requesting to come here tonight.

Mrs. Fortlage stated so the Board doesn't vote on it because Mr. Cohara was not here to make the appeal.

Assistant Law Director Doyle stated that you do vote on it.

Mr. Bredt asked does the Board recognize that it was brought before them? Yes.

Several people began speaking at once again.

Mr. Bredt stated that he was making the motion to deny the applicant's request for an extension of time to mitigate the issue.

Mrs. Fortlage stated that she would affirm and vote yes for the denial?

The Chairman stated that the request was for additional time.

The Secretary stated that you are not permitting the applicant to abate the nuisance, you would not be giving him additional time, so it would be a no. The Secretary stated that you would be voting for the variance, and you would be voting no so that the variance would be denied.

A motion was made by Charles Bredt, seconded by Carol Fortlage, to approve additional time to abate the nuisance on the property.

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

The Secretary stated that there will be no additional time granted.

Several people replied correct.

There being no further business, the July 21, 2022 meeting of the Board of Zoning Appeals was adjourned at 5:53 p.m.

Chairman Mark Moreal

Debi Beal, Secretary
Minutes Unapproved at Time of Release 07/22/2022