

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
October 13, 2022**

New Business:

- 1. 8971 Brookside Road, Robert Perko** – Requesting a variance to 1165.01 of 7’ to permit an accessory building to be 8’ from the side yard (15’ required, 8’ requested) and a variance to 1143.02(2)(B) of 16 sq. ft. to permit an accessory building to be 160 sq. ft. (144 sq. ft. permitted, 160 sq. ft. requested).
- 2. 7829 Dalebrook Road, Macie J. Boc** – Requesting a variance to 1143.02(a)(2) to permit an additional accessory building on the property (not permitted).

The meeting was called to order by Chairman Mark Moreal at 5:31 p.m. and the following responded to Roll Call:

PRESENT: **Mark Moreal, Chairman
Carol Fortlage
Councilperson Chris Walchanowicz**

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

Chairman Moreal stated that at this time he would like to ask the Board if there were any corrections, changes or additions to the September 15, 2022 meeting.

A motion was made by Councilperson Walchanowicz, seconded by Carol Fortlage, to approve the Minutes of September 15, 2022.

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

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Chairman Moreal stated that before the Board would get started, he would like to read the Board of Zoning Appeals opening statement.

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.

Chairman Moreal stated that this evening the Board has two items on the agenda. He asked the Assistant Law Director if he was correct by saying since there were only three Board members in attendance, it would have to be a unanimous 3-0 vote to approve or deny. He stated that if the applicants would wish, they would have the ability to withdraw their matter if they believe they will have some issues.

Assistant Law Director Doyle replied that was correct.

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8971 Brookside Road, Robert Perko – Homeowner Robert Perko was in attendance via Zoom and sworn in.

Building Official Gero stated that there was one additional variance that was missed, and that would be to allow the accessory building to be in the front yard and not the rear yard. He stated that it would be a variance to 1143.02(b)(2).

The Chairman stated that he would like to amend the request to allow the accessory building to be in the front yard which would not be permitted per 1143.02 (b)(2).

Mrs. Fortlage asked if that was a motion.

A motion was made by Chairman Moreal, seconded by Carol Fortlage, to amend the applicant's request to also allow the proposed accessory building to be in the front yard per 1143.02(b)(2) which would not be permitted.

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

Chairman Moreal asked if there were any neighbors present.

The Secretary stated that there were no neighbors in attendance.

The Chairman asked if the neighbors were notified.

The Secretary stated that they had been notified.

Chairman Moreal stated that the last time that Mr. Perko was in front of the Zoning Board a few months back, he asked what has been changed.

Mr. Perko stated that at the last meeting he came before the Board and was approved to put the accessory building on the left side of the home in the photo shown. He stated that would be west of the house on the little side yard.

He stated that the installer came out to do the gravel foundation for that, and they determined that with the doors facing towards the street, the doors would be almost three feet off the ground. He stated that the issues that they were going to run into with ramp sides and that height. He stated that they talked about reversing the doors and having them come out the rear and maybe planting some arborvitaes to hide the height. He stated that no matter how they shook it, it was just

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becoming more problematic. He stated that then they were looking into changing things and then coming back before the Board to put some kind of drainage in behind it and other things.

He stated that he re-evaluated the entire yard and considered all other possibilities and went back to the other consideration they had which was what they were looking at here. He stated that they tried to utilize the flattest point left in the yard while not taking up any remaining space that they could use just for green space.

Chairman Moreal asked if Mr. Perko's neighbor was aware of that.

Mr. Perko replied yes.

The Chairman stated that Mr. Perko went to the complete opposite side of the yard.

Mr. Perko stated that was correct. He stated that it would have been more convenient having it right next to the garage for a variety of reasons, but with the elevation drop there. For the members who had been out there, you could see the whole house sitting in the middle of the hillside. He stated that it was kind of on the hill, in the middle of the hill, and the topography on the right yard down to the driveway was give or take an elevation of 20 feet there. He stated that it didn't really show how the front yard would round down towards the driveway. He stated that it was really the last remaining flat piece of land right there. He stated that the tree to the right of the red mark that was on the picture, it would just go downhill from there.

Chairman Moreal asked if there was less of a chance of seeing it from the street where it would be located now.

Mr. Perko stated that it would be less. He stated that if they would keep scrolling through the photos, the last one that he provided was a street view. He stated that you wouldn't see it either way from the street.

The Chairman stated that Mr. Perko was pretty secluded up there. He remembered the last time.

He asked if anything had changed with the size of the accessory building.

Mr. Perko stated that everything would be identical except they would be relocating the doors from the short side, the end side, and moving that to the long side. He stated that if you would be looking at the orange stakes there in the bottom left photo, the doors would eventually be in the middle stake on the left side.

Mrs. Fortlage asked if part of Mr. Perko's previous variance the size. She didn't think it was, but she needed to be reminded.

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Mr. Perko stated that it was for the same size.

Mrs. Fortlage asked if the Board had to give Mr. Perko an exception for size as well as location.

Mr. Perko agreed.

Mrs. Fortlage stated that she had a procedural question for the Assistant Law Director. She stated that the variance that the Board granted would still be live. She asked if the Board needed to rescind the previous variance, amend it, or how would they handle it because there was an existing variance that would not be used, and this would be a replacement.

Assistant Law Director Doyle stated that to answer Mrs. Fortlage's question, he did not know if there was a right or wrong answer to that. He stated that the clearest answer to that would be to basically make a motion extinguishing the prior variance and present this motion to this body as the homeowner would be requesting it. He stated that basically it would be a brand new request.

Mrs. Fortlage stated that seemed clean to her, and she agreed except that she didn't know what it was last time in terms of size.

Mr. Perko stated that the last time the request was for 160 square foot, not the allowable 144 square foot, and that was what he was asking for still this time.

Mrs. Fortlage thanked Mr. Perko. She stated that they would need to put that back on this one, if they would be vacating the old one. She stated that the interpretation of that then would be to make a motion to rescind the previous variance, and add the three elements for this one.

Assistant Law Director Doyle replied that was correct.

Mr. Perko stated that he had one question before the Board would proceed. He stated that on the first slide, the Building Official mentioned the additional variance for the front yard. He stated that the language on the slide, it said "year" yard. He stated that he thought it needed to be corrected to front yard.

Assistant Law Director Doyle stated that was the first slide.

Building Official Gero stated that was a typo. He stated that Mr. Perko was technically putting it in front of the building line of the home, so that would become the front yard.

Mrs. Fortlage asked if they were correcting the word "year" to "rear", but rear was incorrect anyways, it should be front. She asked that it stated an additional building, and she asked if it was the very small Rubbermaid shed in the back that was the first one?

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Mr. Perko stated that in the last meeting the contingency was that he would take the Rubbermaid shed, which would still be the case.

Chairman Moreal stated that in the Board's last Minutes, the motion was to take the old one down.

Mrs. Fortlage stated that they will leave that contingency in there.

Chairman Moreal stated that it was the perfect one for Mrs. Fortlage to make the motion.

Mrs. Fortlage stated that as far as discussion would go, she does see the uniqueness of the situation, and for that reason she could support it, and the fact that it would be virtually invisible and not annoying to any neighbor that she could figure out.

Building Official Gero stated that he would word it that the Board would rescind all variances granted to Mr. Perko at 8971 Brookside Road on August 18, 2022.

A motion was made by Carol Fortlage, seconded by Councilperson Walchanowicz, to rescind all variance previously granted to the applicant, Robert Perko, at 8971 Brookside Road, Independence, Ohio on August 18, 2022.

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

A motion was made by Carol Fortlage, seconded by Councilperson Walchanowicz, to approve the variances requested for the accessory building to be located 8 feet from the side yard, to be 160 square feet in size rather than 144 square feet, and that the accessory building would be permitted to be located in the front yard, subject to the removal of the existing accessory building on the property.

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

Building Official Gero stated that the Building Department will start to process the paperwork so that Mr. Perko could get his permit. He stated that they will give him a call next week.

7829 Dalebrook Road, Macie J. Boc – Homeowner Macie Boc was in attendance and sworn in.

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

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Chairman Moreal stated that Mr. Boc was before the Zoning Board back in April of this year.

Mr. Boc stated that the last time he was before the Board he was looking for an oversized building. He stated that he just wanted to do a 12' x 24' building. He stated that it would be in the same location as before. He stated that it was more for storage of his car. He stated that he didn't want to put it in the back. He stated that it would be 30 feet off of the curved driveway.

The Chairman stated that just to recap, back in April, he was asking for a 24' x 26', two garage doors, a 16 foot and an 8 foot. He stated that he thought there was a height variance, but now Mr. Boc was asking for 12' x 24', one garage door, no height request.

Mr. Boc agreed.

The Chairman stated that he knows the drawing was a little cloudy for him, how far would Mr. Boc be from the rear yard.

Mr. Boc stated that 150 feet.

The Chairman stated that Mr. Boc would have a side load garage.

Several people began speaking at once.

The Chairman stated that they talked about a front load garage.

Building Official Gero stated that there was no Homeowners Association in that area.

The Chairman stated that he went back to the Minutes, and they kept talking about it.

Mr. Boc stated that there was no Homeowners Association.

Mrs. Fortlage stated that at this point it would be a straight shot back from the street along the driveway, and the other structure was a pavilion. She stated that it looked to her like it would fit reasonably and not be anything obnoxious to the neighbors.

The Chairman stated that the proposed garage was just a little bit bigger than a permitted accessory building. He stated that he thought it fit the neighborhood better. He stated that he liked the look of it. He stated that Mr. Boc had a lot of stuff outside.

Mr. Boc stated that it would be just for storing his car. He stated that way he could keep his tractor in the regular garage.

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Building Official Gero asked Mr. Boc asked if the dump truck was going to be stored inside the garage.

Mr. Boc stated that there was no dump truck anymore. He stated that there were no trailers, nothing.

Building Official Gero stated that the proposed building was nothing more than a one-car garage.

Chairman Moreal stated that it was 288 square feet or something like that. Mr. Boc's last request was 864 square foot. He thought it was a drastic change from the last request. He stated that this building would fit the neighborhood.

A motion was made by Councilperson Walchanowicz, seconded by Carol Fortlage, to approve the variance to permit an additional accessory building on the property.

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

There being no further business, the October 13, 2022, meeting of the Board of Zoning Appeals was adjourned at 5:51 p.m.

Chairman Mark Moreal

Debi Beal, Secretary

Minutes Unapproved at Time of Release 10/14/22