

**MINUTES OF VIRTUAL MEETING
BOARD OF ZONING APPEALS
CITY OF INDEPENDENCE
November 19, 2020**

AGENDA:

Old Business:

Approval of Minutes of Regular Board of Zoning Appeals Meeting held on October 15, 2020.

New Business:

- 1. 5999 Brecksville Road, Eric Michalski** – Requesting a variance to 1332.08(a) to permit a generator to be located on the side yard (not permitted). **Withdrawn**
- 2. 6860 Bradford Circle, Paul Shim** - Requesting a variance to 1165.02 to permit a deck to extend approximately 9.5 feet past the rear building line (not permitted).
- 3. 6894 Linden Lane, Michael & Jessica Folk** – Requesting a variance to 1165.02 of 1.72 ft. to permit a deck to extend past the rear building line (not permitted).
- 4. 5912 Chestnut Road, Antonio Costanzo** – Requesting a variance to 1143.02(b)(2)(B) of 16 sq. ft. to permit an accessory building to be 160 sq. ft. (144 sq. ft. permitted, 160 sq. ft. requested).

The virtual 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**
 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 he wanted to ask the Board if there were any corrections, changes or additions to the October 15, 2020 Meeting Minutes.

A motion was made by Carol Fortlage, seconded by Charles Bredt, to approve the Minutes of October 15, 2020 as presented.

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

Mrs. Fortlage wanted to ask a question. She asked if the Board was going to get some specific, concise information about the new approach to signs. She asked if it just passed in Council.

Building Official Gero stated that he could send Mrs. Fortlage of the new sign ordinance. He stated that signs would be presented to the Board as they have always been with the variance request sections that would not meet code. He stated that nothing had changed a whole lot; it was just a little reorganization and some specifics on clarification on residential signs.

Mrs. Fortlage stated that basically she thought Building Official Gero was saying that everything that would have to happen in response to the code change, will happen before the Board would ever see a request.

Building Official Gero stated that for the most part that was true. He stated that the Board may see a request. He stated that they still have 30 sq. ft. on a building; so if someone would come in and they have a sign that would be larger than 30 sq. ft., they would apply for a variance.

Law Director O'Brien stated to Mrs. Fortlage that he agreed with the Building Official. He stated that most of it was clarification, and it would just help the Building Department. He stated that one thing that the Board may see more of would be any appeals to the Building Official's denials to signs or Notice of Violation to signs; and then they will also see because Mayor Kurtz ran on it. He stated that it would be starting to percolate, which would be something similar to the one that they had a few months ago where the applicant appealed the Notice of Violation by the Building Official. He stated that it would be more so in the Zoning Code or a house code violation; the Board of Zoning will be the place for any aggrieved resident to file an appeal. He stated that he believes the Board will see more of those next year.

Mrs. Fortlage stated that the fact that no electronic signs should save them from having to see those.

Law Director O'Brien stated that it was correct, but he was even talking about even beyond signs. He stated that there were a couple of houses now that they have sent letters to saying to tear down the house because it was dilapidated; and their initial appeal to the notice essentially to abate the nuisance, would be to the Board of Zoning Appeals.

Mrs. Fortlage replied thank you.

Chairman Moreal stated that the first item on the agenda was withdrawn from the meeting.

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6860 Bradford Circle, Paul Shim – No one was in attendance.

6894 Linden Lane, Michael & Jessica Folk – Homeowner Michael Folk and Jason Herb of Klassic Deck were both in attendance and sworn in.

Chairman Moreal asked the applicant to explain to the Board the reason for the variance.

Mr. Folk stated that the thing they were looking at obviously they were over by the Hawthorn Trace group of homes in the Chestnut Woods development. He stated that when they purchased the home they were looking at spec homes. He stated he was incredibly privileged to be a part of the community. He loves Independence. He stated that when they started to look at getting to the back of the home as you can see from the pictures. He stated that they knew they would not have a ton of room back there. They wanted to go through and see if they could utilize that. He stated as everyone could see in the picture at the top left of the screen, that door to the back, right now they were limited in where they could come off of that. He stated that they were trying to find a short way of adding a little bit more space there. He stated that they wanted to come up with something that would not be too large but also would fit the normal specs of some of the decks that they have seen around the neighborhood.

Mr. Folk stated that he thought the biggest thing was that with the 10 foot rise there, they were trying to stay underneath, only coming out an extra foot or so to get the cantilever there. He stated that the goal was to try to utilize the back space while also trying to recognize that they know that trucks and other works might need to get back close to the storm drain that was back there as well. He stated that he would appreciate anything that they could do to try to continue to leverage the backyard as much as possible, while also respecting the community and the land that was behind them.

Chairman Moreal stated to Mr. Folk that he was having a 6 foot wide deck, and then there would be steps down to a patio. He asked if that was a proposed patio.

Mr. Folk stated that they didn't have steps included on it right now. He stated that it would help having that flexibility. He stated that if something were needed to go underneath, they would have that 10 foot rise. He stated that they did not introduce steps to it. He stated that he thought they were very comfortable with that not being a part of it. He stated that the current structure that was there that came from the builder, and that did have the steps. He stated that they were going to remove that. He stated that in the future, and he did realize he would have to come back to make sure they were in compliance, they would want something like a paver patio back there so it would be able to be removed if needed. He stated that he thought the original specs had it 10 foot out; but he understood that they would have to come back and talk through that as well.

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Jason Herb of Klassic Decks stated that the only thing he would add was that the posts for the deck, which will be in the ground, would be recessed about a foot back from the front of the deck. He stated that the 1.72 feet that the deck would encroach into the setback; the posts will actually only encroach .72 feet. He stated that it would be roughly 8 inches into the storm sewer easement.

Mr. Bredt stated that with the posts back 1.72 feet, using 2' x 10' joists, he could certainly cantilever that with no problem.

Mr. Herb stated that they could cantilever a little bit further. He stated that the code for cantilever would be $\frac{1}{4}$ of the span of the joists. He stated that if the joist would be 6 foot, you could take a $\frac{1}{4}$ of that, and that would be the maximum cantilever.

Mr. Bredt replied fair enough, thank you.

Mrs. Fortlage stated that one of the things the Board was charged with looking at was if the need be met in a different way. She stated that what she wondered when she visited there today was could the stairs be brought to the other side, and they would do the second level picnic space or deck, whatever they want to call it, on the side of the house. She stated that she saw the property line, but it looked like there was space to do it on the south side.

Chairman Moreal stated that he thought Mr. Folk stated earlier that he was not putting on stairs.

Mr. Folk stated that was correct.

Mrs. Fortlage stated that she was really thinking about alternatives to needing a variance. She asked if the space that would be hanging off the house, balcony or whatever they would call that, be done on the side of the house with just a walkway to get to it?

Mr. Folk stated that they did explore that option with some of the deck companies, and a couple of things that they talked about with the HOA and then also some of the costs and additional pieces that would come with that. He stated that the cost would probably be a bit more because they would have the wrap around and do the extra steps that would come into play. He stated that also there was the exhaust for the furnace that was on that side of the house as well. He stated that in working with the deck companies, they actually, and he knows that Mr. Herb was there to represent Klassic Decks; but they talked with several groups, and they stated that the best bet was to stay away from having reconfigure some of the exhaust system that was on the back of the house. He stated that it would be to kind of stay in that area and not expand beyond that.

Mr. Folk stated that the other thought they had was that they know that the HOA in their community prefers not to expand too far out on the side of the house. He stated that they also

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thought to stay within their guidelines. He stated that they were trying to find that happy medium and maybe going over closer to that side that was shown in the picture here with a little more of a patio so they could utilize it. He stated that there was another door under there too.

Mr. Monteleone stated that if the Board would approve the variance, he just wanted to make sure that when Mr. Folk would encroach in the area that was protected, that he would be careful with the clean up and make sure that everything would be put back to the way it was supposed to be.

Law Director O'Brien stated to Mr. Folk that they will need, if the variance would get approved, it would have to be subject to the homeowners entering into a License Agreement which would be filed and put in the chain of title for future owners so that if the City would ever need to get back there; and somehow the deck would impede the City, the City would be able to go back there, and if it would interfere and stuff would have to be removed, it would be at the homeowners own risk.

He stated that also he believes there was a provision that would say the Homeowner Association would have to approve this as well; but they can cross that through the Building Department.

Mr. Folk stated that it was understandable, and they understood that coming in to both the meeting and with the property as well.

Mrs. Fortlage stated that she was really not happy with the builder who sold these houses to people suggesting with their big doors up high that this would be a doable thing.

Mr. Bredt stated that the Board has had that conversation multiple times over the last few years.

Mrs. Fortlage agreed, and she stated that the Board has denied a lot of these variance.

Mr. Bredt stated that in this case, especially recognizing the terrain, and the fact the homeowners were asking for a 1.72 foot variance, he was perfectly happy to approve it.

Chairman Moreal stated that if he may also state that the variance was at the southwest corner. He stated that it would only go for about 12 feet, and it would get back to nothing. He stated that there was a little corner there, and the deck builder would keep the posts, he would cantilever over so the posts would not fall much but one corner in the building line. He stated that the homeowners were only putting a 6 foot wide deck. He stated that they didn't have much to work with, and they were doing the best they could. He stated that he didn't have an issue with it.

Mrs. Fortlage stated that one of the issues that the Board was also supposed to look at how significant was the variance, and she agrees that it was not very large as far as how much encroachment there would be; and she would be able to vote for it, but she was not happy with Pulte.

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Mr. Herb stated that if it would make the Board feel any better, there was a community Ryan Homes did in Streetsboro where all the houses only have two feet, and none of the customers knew.

Mrs. Fortlage asked who was builder?

Mr. Herb stated that it was Ryan Homes. He stated that there was a lawsuit going on with the city right now because people were very upset that they have these houses that they can't put a deck on.

Mrs. Fortlage asked if they were designed with a high up opening like Pulte.

Mr. Herb stated not all of them, some of the lots had elevated doors like that; but some of the lots were grade level.

Mrs. Fortlage stated that she was glad that they didn't need more so that it can be viewed favorably.

A motion was made by Charles Bredt, seconded by Councilperson Walchanowicz, to approve the variance, subject to the execution and recording of the License Agreement and Affidavit filed with the Cuyahoga County Recorder's office.

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

Building Official Gero stated that he wanted to let Mr. Folk know that they will go to work on preparing that License Agreement, and let him know when it was ready.

Mr. Herb stated that he will send the Building Official the official submission package for the permit.

Building Official Gero replied thank you.

5912 Chestnut Road, Antonio Costanzo – Homeowner Debbi Costanzo was in attendance and sworn in.

Chairman Moreal asked if there were any presents.

The Secretary stated that there were two attendees on the line, but she did not know if they were neighbors or observers.

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Chairman Moreal stated that he drove by, and he saw that the accessory building was already up. He asked how that happened or why it happened that way.

Mrs. Costanzo stated that honestly she was not even sure. She stated that she thought it was something that her husband inquired about. They talked about it. There was supposed to be a later date delivery, and some wires got crossed somewhere because they came home to the accessory building there. She stated that they were setting up the gravel and everything that it would be on, getting ready for the date that it was supposed to be delivered, and she then came home to it. She stated that he didn't know where the miscommunication was between where he purchased it from and when it actually got delivered. She stated that it wasn't supposed to be delivered until the middle of December.

Chairman Moreal stated that it was pre-built. He stated that it came already built.

Mrs. Costanzo agreed.

Mr. Bredt stated that for clarification, the picture that was in the packet does not represent the accessory building that was actually there. He stated that it was the same square footage on the footprint, but it was not the same accessory building that was there.

Mrs. Costanzo she stated that she was unaware. She just dropped the packet off at the Building Department.

Mr. Monteleone stated that he took it that was why the gravel was not level. He stated that if Mrs. Costanzo could get that adjusted maybe with a jack or something to try to make it look level, it would probably be better for them and the neighborhood.

Mrs. Costanzo agreed. She stated that weather permitting, it was actually supposed to happen this Saturday.

Mrs. Fortlage stated that her question was to the Building Official and/or the Law Director. She stated that having visited the property today and noticed that it was an attractive accessory building, but if it were a fence, it wouldn't be allowed to be there. She asked if there was a building line issue as well?

Building Official Gero asked Mrs. Fortlage why would it not be allowed to be there?

Mrs. Fortlage stated that because it was forward of the neighbor's building line.

Building Official Gero stated that would apply to fences. It would not apply to anything else. He stated that Mr. Costanzo did have a 25 foot side yard setback that he would need. He indicated that he would be 30 feet back from the right-of-way.

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Mrs. Fortlage stated that the side yard on this particular house was the one on Wood. Would that be correct?

The Chairman replied yes.

Building Official Gero stated that it was a Chestnut Road address that would be the front of the house.

Mrs. Fortlage stated that it seemed like the placement of it would not meet code; but she was not able to say exactly what element of code; but the Building Official thinks it does as far as placement.

Building Official Gero stated that what Mr. Costanzo would need for an accessory building would be a 25 foot side yard setback on a corner lot.

Mrs. Fortlage asked if that was met.

Building Official Gero stated that he was 30 foot.

Chairman Moreal asked Mrs. Costanzo if all that property to the neighbor, that was all their property.

Mrs. Costanzo replied correct.

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

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

Nays: None

MOTION CARRIED

Mrs. Costanzo thanked the Board.

Chairman Moreal asked if the applicant was in attendance for the second item on the agenda.

The Secretary stated that there was no one in attendance for the second item.

Mr. Monteleone asked if the matter would go on the next agenda.

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The Secretary stated that they would have to reapply, unless the Board would decide to do something without the applicant being in attendance. She did not know if that could happen or not.

Law Director O'Brien stated that it would just go on as Old Business. The Secretary will reach out the applicant; and if they do not appear, he wanted to make sure there was something in writing that the matter will be removed.

There being no further business, the Board of Zoning Appeals meeting of November 19, 2020 was adjourned at 5:56 p.m.

Chairman Mark Moreal

Debi Beal, Secretary

Minutes Unapproved at Time of Release 11/20/20