

YORK TOWNSHIP BOARD OF APPEALS

August 8, 2019

The York Township Board of Zoning Appeals held their monthly meeting in the York Town Hall/Fire complex on August 8, 2019 at 7:00pm.

The pledge of allegiance was said.

Board Members Present:

Christine Barnes, Ronald Fabich, Richard Hill, Roger Mittler, Todd Supeck, and Alternate Chris Kosman were present.

Guests:

Dorothy Crouch-Zoning Inspector; David Hull-York Township Zoning Commission Member; Jo Champ; Alan Reese, Brook Murray; Chris Foster; Tracy Wooten; Doug Wooten; Erick Matyac; Jen Maytac, Mike Orley

Minutes:

The Board Members Reviewed the proposed minutes from the July 19, 2019 meeting. Roger Mittler made a motion to approve the minutes. Christine Barnes seconded the motion. Minutes approved.

Correspondence:

There was no correspondence.

Public Hearing: Mikaela Mroczkowski – Section 205.14 Lakes & Ponds

Richard Hill opened the Public Hearing, asking for everyone wishing to speak during the Public Hearing to please stand.

Richard Hill then swore in everyone wishing to speak during the Public Hearing. Richard Hill also stated if anyone in the audience would speak they are to state their name and address.

Mary Lenarth read the legal as published in the July 25, 2019 Edition of the Medina County Gazette to consider a variance request from Mikaela Mroczkowski, 1310 Sharon Copley Road, 44274. Owner of property Mike Orley, P.O. Box 655, Bath, Ohio 44210. The property is located at 5530 Fenn Road, Medina, Ohio, for a variance request from Section 205.14 Lakes and Ponds, of the York Township Zoning Resolution.

Richard Hill asked if Mikaela Mroczkowski or Mike Orley were present. Neither Mikaela Mroczkowski nor Mike Orley are present at this time.

Dorothy Crouch stated she confirmed the Public Hearing date and time with both Mikaela Mroczkowski and Mike Orley.

Mary Lenarth also sent Adjacent Neighbor Notifications to both Mikaela Mroczkowski and Mike Orley.

The Board Members and Dorothy Crouch discussed whether to continue with the Public Hearing.

Dorothy Crouch tries to call either Mikaela Mroczkowski or Mike Orley while Richard Hill takes testimony from the audience.

Chris Foster asked the Board Members to explain the process of the Public Hearing, regarding the variance request; and who makes the decision regarding the variance request.

Richard Hill explained the York Township Board of Zoning Appeals is the decision making body, hearing testimony, comments, for and against the issue, and then make a decision whether to approve or deny variance from the York Township Zoning Resolution.

Richard Hill also explained it is the right of the applicant and/or the residents to appeal the decision of the York Township Board of Zoning Appeals in court.

Chris Foster asked if the applicant explained why they needed the variance and if the applicant does not receive the approval of the variance did the applicant offer a contingency plan or what is the next step.

Christine Barnes stated there is no contingency plan.

Todd Supeck explained the Board Members are only deciding either yes or no on a variance from Section 205.14, for the split between the ponds, nothing else.

Chris Foster also asked about the regulation for the pond to be located at least twenty-five (25) foot from all property lines.

Roger Mittler explained the York Township Board of Appeals does not write the York Township Zoning Resolution, the Appeals Board is only here to make a decision regarding a variance, yes or no.

Roger Mittler also explained Section 205.14 Lakes and Ponds can be found in the York Township Zoning Resolution.

Chris Foster asked the Board Members about overriding a variance.

Roger Mittler explained the Board Members are not overriding a variance; the request from the applicant is for a variance.

Roger Mittler also explained the Board Members usually, at the end of the evening, will make a decision based on Zoning Resolution and the Duncan Factors, either yes or no regarding the variance.

Richard Hill read and explained Section 205.14 Lakes and Ponds.

Jen Matyac explained she is concerned about the variance and what might be happening in the future for the property.

Richard Hill stated he understands, but the Board Members can only make a decision regarding the variance.

Roger Mittler explained he is not comfortable making a decision tonight regarding the variance since the applicant and property owner are not present.

Mike Orley spoke up that he is present. Mike Orley arrived late for the Public Hearing.

Richard Hill swore in Mike Orley of 1915 Canterbury Road, Akron, Ohio 44333.

Roger Mittler asked Mike Orley to come forward and explain why he is asking for the variance.

Mike Orley explained because there is no sanitary sewer on the property and would like to divide the property, keep the log cabin, and build on the other parcels.

Christine Barnes asked Mike Orley to explain the map of the property at 5530 Fenn Road. Mike Orley stated he would like to build on three lots.

Mike Orley explained there are ponds there that he cannot do anything about.

The Board Members, Dorothy Crouch and Mike Orley reviewed the map for the variance.

Roger Mittler explained when a variance is requested the Board Members have what is called a Duncan Factor Work Sheet, each question will be read out loud, and this helps the Board Members to make a decision.

Board Members reviewed Factor #1 - Roger Mittler explained he feels the property can be used without the variance. Todd Supeck agreed, Ronald Fabich agreed. Christine Barnes explained she is not looking at other possibilities at this time, she agreed that the property can be used without the variance, Richard Hill agreed.

Factor #1

The property could yield a reasonable return and there would not be any loss of use by reconfiguring the property line. All Board Members agreed.

Board Members reviewed Factor #2 – Todd Supeck explained the Board Members are only talking about if it is ok for the pond to be less than twenty-five (25) feet from the property line, Todd Supeck explained the variance is not substantial. Ronald Fabich feels the variance is substantial because the ponds would be divided. Christine Barnes feels it is substantial since it will affect both ponds. Richard Hill agrees with Ronald Fabich. Roger Mittler explained it is substantial the twenty-five (25) feet regulation was put there to keep the embankments away from other resident’s properties. Richard Hill also added that less than twenty-five (25) feet does not provide the new owner’s the proper amount of space to maintain the bank of the pond.

Roger Mittler asked David Hull, member of the York Township Zoning Commission, if the Zoning Resolution for the Lake and Ponds have been this way for several years. David Hull answered yes.

Factor #2

Four (4) out of five (5) board members feel that the request is substantial in that it does not allow room for maintenance in the event of a problem.

Board Members reviewed Factor #3 - Roger Mittler does not see that the character of the neighborhood would be changed. Todd Supeck agrees it will not be detrimental to the adjoining properties.

Ronald Fabich asked Eric Madyac to speak. Eric Madyac stated he sees a sketch of what the lot could be changed to, is the Board Members just talking about the single line through the pond. Roger Mittler agreed.

Chris Foster suggested a fence to be erected to distinguish the property lines. Dorothy Crouch explained there is nothing in the Zoning Resolution regarding a fence. Roger Mittler explained the Board Members are not here to decide on a fence.

Jo Champ asked if Mike Orley is asking for the variance to be able to sell the thirty-one (31) acres to someone else. Roger Mittler answered the Board Members do not know that.

Jo Champ asked Mike Orley if that was his plan. There is no answer.

Roger Mittler stated the Board Members are here to consider is the variance.

Richard Hill stated he does not feel the variance would alter the neighborhood.

Factor #3

All Board Members are in agreement that the requested variance would not alter the neighborhood or be a detriment.

Board Members reviewed Factor #4 – Chris Kosman stated fire and ambulance services can respond to the property. Christine Barnes agreed the variance will not affect fire and ambulance services. Ronald Fabich agreed, there is a couple of ways fire and ambulance could reach the property. Roger Mittler stated as of today, the variance for the two (2) ponds will not affect fire and ambulance service. Richard Hill after reviewing Duncan Factor agreed as the property exists today the variance will not affect fire and ambulance services.

Tracy Wooten stated she does not want anyone driving across her property in case there is an emergency regarding fire or ambulance.

The Board Members, Dorothy Crouch, Tracy Wooten, Chris Foster discuss access for fire and ambulance services for the 5530 Fenn Road property owned by Mike Orley.

Factor #4

The requested variance would not affect the delivery of the government services. All Board Members agree.

Board Members review Factor #5 – Roger Mittler asked Mike Orley if he knew the York Township Zoning Resolution when he bought the property at 5530 Fenn Road. Mike Orley answered he did not know the York Township Zoning Resolution. Richard Hill asked Mike Orley how long he has owned the property at 5530 Fenn Rd. Mike Orley answered about one year.

Ronald Fabich asked Mike Orley if he is the sole owner and builder of Boulder Homes Inc. Mike Orley answered yes. Ronald Fabich mentioned if Mike Orley is in the business of buying and building homes he should have known the York Township Zoning Resolution. Mike Orley stated he bought the land with the thoughts of putting thirty-eight (38) lots on the property, due to the sanitary diversion that is not possible.

Todd Supeck stated he is not sure if Mike Orley knew about the York Township Zoning Resolution and does not know if it really matters. Christine Barnes feels Mike Orley swore under oath to answer truthfully and is going with the oath that Mike Orley swore

to. Christine Barnes does not feel Mike Orley knew about the York Township Zoning Resolution.

Eric Matyac asked if the York Township Zoning Resolution was available at the time of Mike Orley's purchase of the property at 5530 Fenn. Dorothy Crouch and Roger Mittler answered the York Township Zoning Resolution was available at the time of the purchase.

Dorothy Crouch asked Mike Orley if he had gone to Medina County Soil and Water Department to see if there would be any adverse effects for building on the property at 5530 Fenn Rd. The Board Members, Dorothy Crouch and Mike Orley discussed the ponds and the Medina County Soil and Water Department.

Mike Orley explained the problems he has incurred regarding trying to develop the property at 5530 Fenn Rd.

Factor #5

The property owner stated that he did not know of the zoning restriction concerning the ponds because the original intent of the property was to split it into thirty-eight (38) lots. It has been noted that the York Township Zoning Resolution is on line (York Township website) or could be purchased from the York Township.

The Board Members review Factor #6 – Todd Supeck stated yes the problem can be solved by some manner other than granting of a variance. Roger Mittler agreed, could be split different way. All other Board Members agreed.

Factor #6

All members agree that the property could be split to include both ponds and avoid a request for a variance.

The Board Members review Factor #7 – Roger Mittler stated a variance would be used when you cannot do anything else. Roger Mittler also stated something else could be done and the value of the property would still be there. Roger Mittler does not feel granting the variance would preserve the spirit of the intent of the zoning. Todd Supeck stated he agreed, a variance should be a last resort, there are many different ways to go.

Mike Orley stood up, stated he will change his plans, “ok – thanks”.

Roger Mittler explained the Board Members will finish reviewing the Duncan Factors whether Mike Orley stays or leaves.

Roger Mittler again explained the Board Members are only reviewing the Duncan Factors at this time; no decision has been made at this time.

Mike Orley stated he will change it – “ok”. Mike Orelly means he will change his plans.

Todd Supeck asked Mike Orley if he wanted to withdraw the Public Hearing. Mike Orley answered “Yes, have a good day”. Mike Orley left the Public Hearing.

Todd Supeck explained to the audience that we all live in York Township, the York Township Board of Appeals is trying to do the best they can for York Township. Todd Supeck went on to explained just because a Board Member answers a question either yes or no does not necessarily mean how it will affect the final decision of the Board Members. Todd Supeck also explained the Duncan Factors are just a tool to help the Board Members make their decision.

The Board Members, Dorothy Crouch and the audience discussed the York Township Zoning Resolution and their own knowledge of the Zoning Resolution.

Factor #7

The variance request does not preserve the spirit and intent of the York Township Zoning Resolution as there are other options to splitting the property

Roger Mittler went on to explain Duncan Factor #7 – Christine Barnes asked how the Board Members decide on the spirit and the intent of the twenty-five (25) foot set-back of a pond. Other Board Members explained you need to be able to repair the pond consider erosion, vegetation growth, etc.

Richard Hill made a motion to record the Board Members comments and review of the Duncan Factors regarding the variance request for Mike Orley. It is also noted Mike Orley withdrew his variance request, changing his plans. Todd Supeck seconded the motion. Roll vote: Christine Barnes-aye; Ronald Fabich-aye; Richard Hill-aye; Roger Mittler-aye; Todd Supeck-aye. Motion approved.

Chris Foster asked how he would know if Mike Orley proceeds with his plans at 5530 Fenn Rd.

Dorothy Crouch explained York Township Zoning Resolution.

David Hull explained the York Township meeting schedule for the Trustees, Commission and Board of Appeals.

Dorothy Crouch stated residents can call the York Township Office at any time with questions or concerns.

Richard Hill also mentioned there is usually time for comments/ questions at each York Township meeting.

Old Business:

No old business.

New Business:

No new business.

Adjourn:

Richard Hill adjourned the meeting at 8:20pm.

Richard Hill, Chairperson

Mary Lenarth, Secretary