

CITY OF AURORA  
OHIO  
**BOARD OF ZONING APPEALS**  
Meeting Minutes  
July 13, 2016

The Aurora Board of Zoning Appeals met in a regularly scheduled meeting Wednesday, July 13, 2016 in the Council Chambers at City Hall. The meeting was called to order at 6:31 p.m. by Chairman Terese Fennell.

**ROLL CALL:** Present: Tom Carr, Alternate  
Terese Fennell, Chairman  
Tony Gramm, arrived 6:32 p.m.  
Jeff Iammarino  
Bernard McCarrell, Vice Chairman  
Tim Novotny  
Also Present: Dean DePiero, Law Director  
Meredith Davis, Asst. Director Planning, Zoning, Building Division  
Jack Burge, Economic & Entrepreneurial Development Director  
Marie Lawrie, Clerk

**DECLARATION OF OATH:**

Mr. DePiero swore in those that planned to speak.

**AMENDMENTS TO THE AGENDA:**

**MOTION: To move Darren Stevenson, 1055 Pennsylvania St (1606025) and Scott Moonen, 857 E Garfield Rd (1606026) to the top of the agenda**

Mr. Iammarino moved for approval; Mr. Gramm seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. Iammarino, Mr. Gramm, Mr. McCarrell, Mr. Novotny, Ms. Fennell  
Nays: None

A letter was received from Russ Stoltzfus of 1050 E Mennonite Road in favor of granting the variance request at 1009 E Mennonite Road.

**MOTION: To accept the document for consideration**

Mr. Novotny moved for approval; Mr. Gramm seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. Novotny, Mr. Gramm, Mr. Iammarino, Mr. McCarrell, Ms. Fennell  
Nays: None

A letter was received from Loretta Stephan of 102 Royal Oak Drive opposed to the variance request from Elm Investments LTD.

**MOTION: To accept the document for consideration**

Mr. Novotny moved for approval; Mr. McCarrell seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. Novotny, Mr. McCarrell, Mr. Gramm, Mr. Iammarino, Ms. Fennell  
Nays: None

**APPROVAL OF MINUTES:**

**MOTION: To adopt the minutes of the June 8, 2016 meeting**

Mr. McCarrell moved for approval; Mr. Gramm seconded, and the motion carried, 5-0-1, on a roll call vote.

Yeas: Mr. McCarrell, Mr. Gramm, Mr. Carr, Mr. Iammarino, Ms. Fennell  
Nays: None  
Abstentions: Mr. Novotny

**NEW BUSINESS:**

**DARREN STEVENSON, 1055 PENNSYLVANIA ST (1606025) – ACCESSORY STRUCTURE IN A SIDE YARD, WHERE THE CODE STATES AN ACCESSORY STRUCTURE IN PERMITTED ONLY IN A REAR YARD**

Darren Stevenson, homeowner was on hand to answer questions. He stated that he would like to erect a shed on his property. The shape of his parcel is such that the backyard is very narrow and to construct a shed in the rear would require the homeowner to apply for a rear yard setback variance. There is no feasible way to erect a shed that complies with the zoning code. The area the resident would like to put the shed is the most level and convenient place on his lot. There was no one present to make public

comment on this variance request.

The Board discussed the request among themselves. Mr. lammarino stated that the variance request is not substantial. There would be no adverse effect to the neighborhood. Ms. Fennell stated that due to the shape of the lot, there was no way to construct a shed without a variance of some kind. For this reason, she felt the variance request was not substantial. Mr. Novotny agreed and commented that the applicant was very proactive by getting the support of his neighbors.

**MOTION: To grant the variance as requested**

Mr. lammarino moved for approval; Mr. McCarrell seconded, and the motion carried, 5-0, on a roll call vote.  
Yeas: Mr. lammarino, Mr. McCarrell, Mr. Gramm, Mr. Novotny, Ms. Fennell  
Nays: None

SCOTT MOONEN, 857 E GARFIELD RD (16006026) – 3<sup>RD</sup> ACCESSORY STRUCTURE

Scott Moonen, property owner was in attendance to explain the variance request. He stated that he removed a shed some time ago to erect a pool in the yard. Since that time his grandson purchased a car and his vehicle storage needs have increased. It has become necessary to move some items out of the garage. He would like to re-erect the shed. The location for the shed sits 400 feet from the street. He reported that he owns 5.2 acres and that the structure would not be very visible as the traffic flows at 50 mph. There was no one present at the meeting to make public comment pertaining to this request.

The Board discussed the variance request among themselves. Mr. Gramm stated he did not feel the variance was substantial. He agreed that the structure would not be very visible from the street and that the shed would not adversely affect the neighborhood. Ms. Fennell stated that with over 5 acres the added structure was not substantial. The members agreed.

**MOTION: To grant the variance as requested**

Mr. McCarrell moved for approval; Mr. lammarino seconded, and the motion carried, 5-0, on a roll call vote.  
Yeas: Mr. McCarrell, Mr. lammarino, Mr. Gramm, Mr. Novotny, Ms. Fennell  
Nays: None

PAUL JOHNSON, 1009 E MENNONITE RD (1606022) – ADDITIONAL ACCESSORY STRUCTURES AND ADDITIONAL SQUARE FOOTAGE FOR A POOL, POOL HOUSE, AND HORSE ARENA

Paul Johnson, property owner was present at the meeting. He stated that he purchased this property in January 2016. He would like to erect a pool and pool house as well as a horse arena behind the current barn, which was constructed in 1901. The pool will be located behind the house and not visible from the street. He was not aware of the zoning codes at the time of purchase. He has few neighbors and contacted them about his plans. There is a dairy farm across the street and that owner has signed a letter of

support. The Moebius Center is his neighbor to the west. The neighbors to the east are Brent and Audrey Besinger with a 32 acre parcel. A letter was received from this neighbor. Mr. Johnson explained that the arena will sit behind the current barn and will be erected into the ground depression. The top of the new structure would sit 5 to 6 feet above the existing barn. The arena would be used to exercise the horses. The family currently owns 3 horses of their own and is boarding a horse for a friend. Mr. Johnson stated that the barn has 7 stalls and they have plans to board additional horses in the future for retirement income.

Ms. Fennell explained that the boarding of horses would constitute a home occupation, which would require attaining a Conditional Zoning Certificate from the Planning Commission. Mr. DePiero, legal advisor to the Board reiterated that the current homeowners cannot board horses for hire or rent the guest house without a Conditional Zoning Certificate. It was explained that the recommended order to follow would be to apply to the Planning Commission first for the CZC and then apply to the BZA asking for additional accessory structure and square footage. Being that the applicant has applied to the BZA first and stated the future plans to board horses for supplemental income, it might be advisable to table this portion of the request. This would allow the applicant sufficient time to apply to the Planning Commission and/or meet with the Building Department for further discussion on the use of the property.

When asked, the applicant explained that currently on the property there is a barn, a guest house, a shed and a detached garage. He understood that when a previous owner of the property built the current main home, they decided to leave the existing dwelling and use it for a guest house. Mr. McCarrell asked if the existing accessory structures are permitted. Mr. DePiero explained that the structures on the property at the time of purchase were permitted until such time as the applicant has applied for additional structures. Current zoning regulations will now be in effect for this parcel.

It was clarified that the property owner has 3 parcels. The parcel where the accessory structures would be built is a 10 acre parcel. The additional parcels cannot be considered because they are not consolidated at this time.

Ms. Fennell also explained that the neighbors to the east requested that the Board table their decision on the arena until such time as they could be present to voice their concerns. The neighbors were not concerned about the pool and pool house, but were not in favor of the Board approving a variance to allow the riding arena at this time. It was explained that the Board of Zoning Appeals is under no obligation to table a variance request on the grounds that a neighbor is unable to attend a meeting and voice their opinion. It was also stated by Mr. McCarrell that the letter submitted from the neighbor was well written and that their concerns would be considered by the Board.

Janet Bower, representative of the Besinger family spoke to the Board with regards to the concerns stated in the letter submitted to the Building Department. The neighbors stated concerns about excessive number of structures and excessive square footage of accessory buildings. The encumbered sight lines imposed by the 6,000 square foot horse arena were stated in the letter as well as maintaining the rural, residential quiet

homestead. A large concern is the impact the arena would have including excessive traffic, noise, odor, and security of the neighboring property. She asked the Board to table the arena.

There was a brief discussion on ways to reduce the amount of accessory structures and/or total square footage considering the existing structures and proposed structures.

There was a discussion about how to proceed with a vote. The Board could vote on or table the requests as submitted or bifurcate. The applicant could also withdraw their request at this time.

Mr. Johnson was not in favor of separating the project as he intends to bring in excavating equipment one time to prepare for both projects. He was not in favor of tabling the request. He stated that the possibility of boarding horses is not part of their immediate plan. The arena would be used to exercise their horses. Mr. Johnson further stated that he had no intention of violating the zoning code or breaking any laws. He has a need for this structure for his own animals and would follow the appropriate steps at a later date if a decision was made to operate a home business.

The Board discussed the variance request among themselves.

Mr. Novotny stated that he has background with horses. He felt that 6,000 square feet for a horse arena was small. If the structure was used for a non-commercial use only, he would be in favor of granting the variance. The non-commercial use of the structure would alleviate some of the concerns of the neighbor.

Ms. Fennell stated that the variance request is substantial. The three structures that the applicants would like to erect are each very large.

Mr. McCarrell expressed his desire to split the variance request. The pool and pool house would be considered separate of the horse arena.

**MOTION: To bifurcate the variance request**

Mr. McCarrell moved for approval; Ms. Fennell seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. McCarrell, Ms. Fennell, Mr. Gramm, Mr. Iammarino, Mr. Novotny

Nays: None

The Board discussed the pool and pool house. This creates variance requests for 2 additional accessory structures and an additional 2,592 of square footage.

Mr. McCarrell did not feel this request was substantial for this particular parcel. Mr. Iammarino agreed. Ms. Fennell agreed stating that the applicant did not erect the existing structures and would need to apply for a variance to erect any new structures on the property.

**MOTION: To grant the variance for 2 additional accessory structures (pool and pool house), as amended**

Mr. McCarrell moved for approval; Mr. Gramm seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. McCarrell, Mr. Gramm, Mr. Iammarino, Mr. Novotny, Ms. Fennell

Nays: None

**MOTION: To grant the variance for an additional 2,592 square foot of accessory structures (pool and pool house), as amended**

Mr. Iammarino moved for approval; Mr. Gramm seconded, and the motion carried, 3-2, on a roll call vote.

Yeas: Mr. Iammarino, Mr. Gramm, Mr. Novotny

Nays: Mr. McCarrell, Ms. Fennell

There was discussion pertaining to whether or not to vote on the horse arena at this meeting. Ms. Fennell expressed her concern that this structure could be used for personal and commercial use and should go to Planning Commission first. She asked the Board to table this issue and allow the Planning Department to look at this request.

**MOTION: To table the variance requests pertaining to the horse arena**

Ms. Fennell moved for approval; Mr. Gramm seconded, and the motion was **defeated**, 3-2, on a roll call vote.

Nays: Mr. Iammarino, Mr. McCarrell, Mr. Novotny

Yeas: Ms. Fennell, Mr. Gramm

There was a discussion about the vote. Ms. Davis explained that by forcing a vote at this meeting, should the vote result in a denial, the Board would in essence be taking away Mr. Johnson's opportunity to apply to Planning Commission for a Conditional Zoning Certificate for a home occupation for the proposed arena. Also, if the vote resulted in a denial, the applicant could not build the arena. A decision was reached to reconsider the prior motion and vote.

Mr. Johnson stated that he has no intention today of using the arena for commercial use. That was not his intent at this point in time. He was encouraged to make an appointment with the Directors of the Planning, Zoning, and Building Department to understand all his options.

**MOTION: To reconsider the prior vote to table the variance requests pertaining to the horse arena**

Mr. Gramm moved for approval; Mr. McCarrell seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. Gramm, Mr. McCarrell, Mr. Iammarino, Mr. Novotny, Ms. Fennell

Nays: None

**MOTION: To table the variance requests pertaining to the horse arena**

Ms. Fennell moved for approval; Mr. McCarrell seconded, and the motion carried, 3-2, on a roll call vote.

Yeas: Ms. Fennell, Mr. McCarrell, Mr. Gramm

Nays: Mr. Iammarino, Mr. Novotny

**MDF DEVELOPMENT/ HICKORY RIVER SMOKEHOUSE, 238 E GARFIELD RD (1606023) – ADDITIONAL SIGNS ON WINDOWS AND 40% ADDITIONAL SIGN SQUARE FOOTAGE**

Joe Shomette, of Hickory River Smokehouse attended the meeting. Currently, the business has a monument sign. They will also be seeking approval from the Architectural Board of Review on July 28, 2016 for a wall sign. This variance request pertains to the three non-operational, tinted windows on the front elevation of the building. He is requesting additional window signs to show that the business is a restaurant and not just a smokehouse. There has been confusion with some customers, who do not know that they can dine in. Mr. Shomette reported that his monument sign is often blocked and unseen. Mr. Iammarino stated that the bottom portion of the window clings would be blocked by the front parking. Mr. Gramm asked the applicant if they had considered using sandwich board signs. That would be a separate sign application and process. Mr. Novotny asked the applicant if the wall sign and monument sign would be enough advertising. Mr. Shomette stated that he would like to use the available window space for additional advertising. There was a discussion on reducing the amount of signs and the square footage percentage of the variance requests. There was no one present to make public comment on this variance request.

There was a five minute recess at this point in the meeting.

The Board discussed the variance request among themselves. The Board considered a variance for 25% window coverage rather than 40%. Ms. Fennell stated that 40% coverage was a substantial variance. She felt that 25% was not substantial. She further stated that for this particular location, which has been several different types of businesses that this additional advertising might be helpful to the applicant. Mr. Iammarino stated that 25% window coverage was not substantial and would not substantially alter the character of the area.

**MOTION: To grant the variance request for an additional 25% window coverage, as amended**

Mr. Gramm moved for approval; Mr. Iammarino seconded, and the motion carried, 4-1, on a roll call vote.

Yeas: Mr. Gramm, Mr. Iammarino, Mr. McCarrell, Ms. Fennell

Nays: Mr. Novotny

**MOTION: To amend the number of additional signs from the requested 9 total to 4 total window cling signs**

Mr. McCarrell moved for approval; Mr. Iammarino seconded, and the motion carried, 4-1, on a roll call vote.

Yeas: Mr. McCarrell, Mr. Iammarino, Mr. Gramm, Ms. Fennell

Nays: Mr. Novotny

**MOTION: To grant the variance for a total of 4 window cling signs, as amended**

Mr. McCarrell moved for approval; Mr. Gramm seconded, and the motion carried, 4-1, on a roll call vote.

Yeas: Mr. McCarrell, Mr. Gramm, Mr. Iammarino, Ms. Fennell

Nays: Mr. Novotny

ELM INVESTMENT TRUST LTD/THE GREENS OF AURORA, 03-024-10-00-077-001  
NORTH CHILLICOTHE RD (1606024) – 38 FOOT FRONT BUILDING SETBACK,  
WHERE 150 FEET IS REQUIRED

Sam Cannata, Manager was present at the meeting to answer questions. He was seeking a front building setback variance for two commercial buildings which will be located within the Greens of Aurora shopping center. To develop this parcel of land is a challenge with the presence of wetlands on the back third of the property. The Planning Department and Planning Commission have requested that the buildings be placed closer to the street with the parking behind for design and aesthetic purposes. There was discussion that this arrangement might be safer, as North Chillicothe Road is very busy. Putting the buildings with landscaping along the street creates a more pedestrian friendly and safe environment. It was stated that if the developer planned the parking in front of the buildings, he would need a parking setback variance. There were several people in attendance to make public comment on this issue.

Linda Sieber, 104 Royal Oak Drive was not in favor of the variance. She was concerned with traffic flow and the amount of buildings on the parcel. When asked, Ms. Sieber stated that she is against the project altogether. She further stated that when she purchased her property, she was told that the parcel in question was unbuildable.

Frank Schenck, 101 Royal Oak Drive was not in favor of the variance. He stated that he would prefer the parking in front of the buildings. He was also concerned with light pollution in the parking lot.

The Board also considered a letter submitted by Loretta Stephan, 102 Royal Oak Drive, who was not in favor of granting the variance.

There was no further public comment. The Board discussed the application among themselves. Mr. Iammarino stated that the variance request numerically is somewhat substantial, however, based on the checklist used by the Board of Zoning Appeals, he did not find any other issues to be concerned about. Mr. Gramm and Mr. Novotny agreed. Mr. McCarrell did not feel the neighborhood would be adversely affected. Ms. Fennell stated that governmental services, such as emergency vehicles would benefit from the

variance request. Mr. Novotny agreed and was concerned with pedestrian safety. Mr. Gramm thought the plan would generate vibrancy in the City. He thought it would generate new shops and the plan was aesthetically pleasing. He was pleased with the landscape plan. He agreed that the variance request was numerically substantial; however the overall plan was very nice. Ms. Fennell stated that reasonable economic return was a checklist consideration. In order to put something commercial on that parcel, safe parking must be considered. By planning the parking in the middle of the area, safety will be appropriately addressed.

**MOTION: To grant the variance as submitted**

Mr. Iammarino moved for approval; Mr. Gramm seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. Iammarino, Mr. Gramm, Mr. McCarrell, Mr. Novotny, Ms. Fennell

Nays: None

CHRISTINA SCHWED, 884 COLONY DR (1606027) – CHICKENS ON LESS THAN 3 ACRES – ANIMAL SHELTER 9' FROM PROPERTY LINE, WHERE 100 FOOT IS REQUIRED

Nicole and Aaron Shorter, daughter and son-in-law of the property owners were on hand to answer questions. She lives at 884 Colony Drive. The family owns three adjoining properties including 884 Colony Drive, 385 Cochran Road, and the parcel 03-003-10-00-138-000. Together these parcels equal 3 acres. The parcels cannot be combined because there are single family homes on 2 of the parcels. Combining any 2 parcels into a single parcel will not equal the 3 acres needed to own chickens. She requested that Board allow the family to have chickens and suggested that the variance contain a stipulation that at any time the family sells any of the 3 parcels, that the variance would expire. Chairman Fennell asked Mr. DePiero, the Legal Advisor whether this stipulation could be added to a variance. He advised the Board to concentrate on the issue of having chickens on less than 3 acres, but that they could take into consideration other properties owned by the family. Ms. Shorter stated that the chickens she owns are not considered pets. They eat the eggs and also eat the chickens. The chickens are guaranteed disease-free. They are contained in a clean coop with netting over the top. There is no odor. They are not free-range and do not leave the yard. They currently have 42 chickens, most of which are meat chickens which will be processed shortly. The normal population is around 13 chickens. They have had the coop for over a year and provided letters of support from 7 neighbors, most of who did not know she owned chickens until she approached them for their support on the variance request.

Ms. Fennell asked the couple if they had approached City Council and asked for a change in the Zoning Code. Aaron Shorter gave testimony that he spoke to several City Council members who advised him not to pursue a code change due to other property owners in the area who also owned chickens and as long as no one complained to just go ahead with raising their chickens because they did own several adjoining properties. The coop is 100 feet from the property lines of neighbors, who are not part of the 3 adjoining family properties. Ms. Fennell asked if any other neighbors have barn animals. Ms. Shorter stated that there are neighbors with goats and pigs in the area. There was discussion about the ramifications of allowing these 3 parcels to be considered as one unit for this

variance request. In this instance, the owners of the parcels are one in the same. The concern is that other non-related neighbors will seek approval for chickens by an arrangement to consider their properties as one unit. Council may need to review this code, rather than Board of Zoning Appeals granting variances.

Mike Geyer, 898 Colony Drive was in favor of the variance. He reported that the coop is very nice, the chickens do not smell bad, and they do not disturb anyone. He has lived in the same house since 1965. He stated that the Shorters are great neighbors and he would sign his property over to them in order to save the chickens.

The Board discussed the application among themselves. Ms. Fennell stated that in this instance, the neighbors are supportive, and their circumstance is unique. However, the City of Aurora is becoming increasingly residential. The keeping of barnyard animals within residential areas is an issue. Mr. McCarrell and Mr. Iammarino agreed. Mr. Novotny expressed disappointment, if in fact; members of City Council gave the reported advice. He is favor of City Council reviewing the current zoning code pertaining to the keeping of chickens, rather than reviewing applications for future variance requests. Mr. Carr inquired whether the application could be tabled in order to give City Council time to address the issue. Mr. DePiero stated that this would not be an issue that could be resolved quickly. City Council and Planning Commission would be involved in reviewing this zoning code and there would likely be public hearings and Planning Commission deliberation. Mr. Carr stated that due to this particular applicant, it may be time for Council to act on this issue. Because the Board of Zoning Appeals does not create legislation, the idea of tabling the application came to mind to allow time for Council to consider legislation on this topic. Mr. DePiero reminded the Board that should the application be tabled, during that time period, the applicant would be in violation. Mr. DePiero stated that he and Ms. Davis could deliver the message to City Council that the Board of Zoning Appeals would like them to review the topic of Chickens within the City. The Board of Zoning Appeals stated that it would have been beneficial if a member of City Council would have attended this meeting.

**MOTION: To table the application to allow chickens on less than three acres**

Mr. Novotny moved for approval; Ms. Fennell seconded, and the motion was **defeated**, 3-2, on a roll call vote.

Nays: Mr. Gramm, Mr. Iammarino, Mr. McCarrell  
Yeas: Mr. Novotny, Ms. Fennell

**MOTION: To grant the variance for chickens on less than three acres**

Mr. Iammarino moved for approval; Mr. Novotny seconded, and the motion was **defeated**, 4-1, on a roll call vote.

Nays: Mr. Iammarino, Mr. Gramm, Mr. McCarrell, Ms. Fennell  
Yeas: Mr. Novotny

**MOTION: To grant the variance for an animal shelter 9' from the property line, where 100' is required**

Mr. McCarrell moved for approval; Ms. Fennell seconded, and the motion was **defeated**, 4-1, on a roll call vote.

Nays: Mr. McCarrell, Ms. Fennell, Mr. Gramm, Mr. Iammarino

Yeas: Mr. Novotny

**MISCELLANEOUS:**

None

**ADJOURNMENT:**

**MOTION: To adjourn the meeting**

Mr. McCarrell moved to adjourn at 9:03p.m. Mr. Gramm seconded, and the motion carried on a unanimous voice vote.

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Terese Fennell - Chairman

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Marie Lawrie - Clerk