

CITY OF AURORA  
OHIO  
**BOARD OF ZONING APPEALS**  
Meeting Minutes  
October 12, 2016

The Aurora Board of Zoning Appeals met in a regularly scheduled meeting Wednesday, October 12, 2016 in the Council Chambers at City Hall. The meeting was called to order at 6:30 p.m. by Chairman Terese Fennell.

**ROLL CALL:** Present: Terese Fennell, Chairman  
Tony Gramm  
Jeff Iammarino  
Bernard McCarrell, Vice Chairman  
Tim Novotny, arrived 6:31 p.m.  
Absent: Tom Carr, Alternate  
Also Present: Matthew Vazzana, Legal Advisor  
Denise Januska, Director Planning, Zoning, Building Division  
Marie Lawrie, Clerk

**DECLARATION OF OATH:**

Mr. Vazzana swore in those that planned to speak.

**AMENDMENTS TO THE AGENDA:**

Several letters were received after the packets were delivered to the members. Members received the letters by email prior to the meeting and also received a paper copy of the documents before the start of the meeting. Following is a list of these letters.

190 Millpond Road – Alan and Jean Goodwin  
280 Millpond Road – Tom Polsky  
408 Millpond Road – Marianne Biederman  
601 Bounty Road – Virginia Rodriguez  
601 Bounty Road – Patricia Vanderwal  
279 Millpond Road – Nada Kokal  
279 Millpond Road – Joseph Kokal  
418 Millpond Road – Ben and Andrea Hartenburg  
80 Millpond Road – Dale Kaskey  
110 Millpond Road – Demas McVay

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

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

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

Nays: None

There was a late letter forwarded by email to the members just before the meeting. This letter opposed granting the variances and was received from Robert and Deborah Scharler of 300 Mill Pond Road. This letter was read aloud.

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

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

Yeas: Mr. Gramm, Ms. Fennell

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

**APPROVAL OF MINUTES:**

**MOTION: To adopt the minutes of the August 10, 2016 meeting**

Mr. Novotny moved for approval; Mr. Iammarino seconded, and the motion carried, 3-0-2, on a roll call vote.

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

Nays: None

Abstentions: Mr. Gramm, Mr. McCarrell

**MOTION: To adopt the minutes of the August 18, 2016 special meeting**

Mr. Gramm moved for approval; Mr. Iammarino seconded, and the motion carried, 3-0-2, on a roll call vote.

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

Nays: None

Abstentions: Mr. McCarrell, Mr. Novotny

**MOTION: To adopt the minutes of the September 14, 2016 meeting**

Mr. McCarrell moved for approval; Mr. Iammarino seconded, and the motion carried, 3-0-2, on a roll call vote.

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

Nays: None

Abstentions: Mr. Gramm, Mr. Novotny

**NEW BUSINESS:**

**TONY SMITH, 850 W GARFIELD RD/ 21 COCHRAN RD (1609038) – NEW SINGLE FAMILY RESIDENCE WITH A 51 FOOT FRONT YARD SETBACK, WHERE 100 FEET IS REQUIRED, AND A 40 FOOT SIDE YARD SETBACK, WHERE 50 FEET IS REQUIRED**

Tony Smith, property owner was present to answer questions, along with his builder, Mark Horne of Artistic Design Homes. They were seeking a variance to allow a new single family home to be erected at the corner of West Garfield Road and Cochran Road. This is currently a vacant lot. Zoning code has changed since the homes around this parcel were erected. Current code requires homes on 3 acre parcels or larger. This parcel of land is 1.6 acres. The builder proposes to erect the house in line with the other homes on Cochran Road. The house will face Cochran Road. Due to the topography of the land, the builder stated that this is the best location to construct the home. One letter was received from Bret and Kate Berkey of 866 W Garfield Road. They were in favor of the variances. They requested that the tree line which provides property line definition as well as privacy remain intact. To erect the structure in compliance with zoning code would place the house closer to the Berkey's property.

Bret and Kate Berkey were in attendance to make public comment on this variance request, stating in person what their letter said.

Ms. Fennell closed public comment and the Board discussed the application among themselves.

Mr. Iammarino stated that the variance was not substantial. He further stated that the neighborhood would not be adversely affected by granting the variances. Mr. McCarrell, Mr. Novotny, and Mr. Gramm agreed. Ms. Fennell stated that lining up the new house with the existing homes made sense. She further stated that the variance request was not substantial.

**MOTION: To grant the front yard setback variance as requested**

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

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

Nays: None

**MOTION: To grant the side yard setback variance as requested**

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

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

Nays: None

MICHAEL KILROY, 541 COBBLESTONE RD (1609040) – 1,152 SQUARE FOOT GARAGE, WHERE 576 SQUARE FOOT MAXIMUM IS PERMITTED, WITH A 5 FOOT SIDE YARD SETBACK, WHERE 10 FOOT MINIMUM IS REQUIRED

Michael and Danielle Kilroy were in attendance to answer questions, along with their builder, Mark Horne of Artistic Design Homes. They were seeking variances to erect a 1,152 square foot garage with a 5 foot side yard setback on the property. The garage would be attached to the house by a roof extension. There was a question of whether this structure would be considered an addition to the primary building of the property or an accessory structure. Ms. Januska stated that she did confirm with legal counsel that it is a non-inhabitable space without a common wall and therefore would be considered an accessory structure. Mr. Kilroy stated that he was given an addition application at the time of submittal and was not told that it would be considered an accessory structure. Ms. Fennell gave the applicant the option of withdrawing his plans and revising them as such. Mr. Kilroy stated that he did not believe there was a way to revise them in that fashion. He was in favor of going forward with the submitted plans.

He is looking to expand his kitchen and mud room approximately 10 feet into the current garage space. That would change the existing attached two car garage into a one car garage with storage space. The new structure would be 48' x 24'. This would include 24' x 36' of garage space and 24' x 12' of storage area. The attached storage space negates the need for a shed for lawn equipment and patio furniture, etc.

Ms. Fennell asked if he could build the 24' x 36' garage with storage space above. Mr. Kilroy stated that the structure would be too high and would not match their roof line. Ms. Fennell asked if he could construct a two car garage, which would make three covered parking spaces, even with plans to extend living space into the current garage. Mr. Kilroy stated that with his race car, classic car, and future vehicles for his children, this would not meet his needs. When asked if there was a way to gain additional garage space by expanding his attached garage, Mr. Kilroy stated that would take up a significant amount of his back yard and he felt the submitted plan would best utilize his property.

Mr. Novotny stated that he understands the issue of garage space. He has a car that he has to place in storage because he can't fit it in his garage. Mr. Novotny suggested a compromise of building the 24' x 36' garage portion of the structure without the 24' x 12' storage section. He stated that would give him three covered parking spaces and storage. Mr. Kilroy stated that he could build that structure, however; he would also need to erect a 10' x 20' shed or barn to house lawn equipment. He currently has that equipment stored outdoors along his fence. Mr. Iammarino stated that if he were to erect the 24' x 36' he would still be seeking two variances.

When asked why he needs a side yard setback, Mr. Kilroy stated that he would like to erect the structure over and away from the rear of his home. His goal was to retain as much usable backyard as possible. Mr. McCarrell asked if this was the only location the architects suggested erecting the structure. There was discussion pertaining to front-loading garages within the Architectural Board of Review Residential Guidelines. Mr. Novotny asked if the garage could be built on the opposite side of the house, where it

looked like there was ample room. Mr. Kilroy stated that he could erect it on the opposite side of the house and put in a second driveway. Mr. Novotny stated that he did not see a letter from the neighbor on that side of the house. That neighbor stated that they were present in the audience and would be speaking during public comment. Mr. Novotny then asked the builder if there was a way to build this structure without a variance. Mr. Horne stated he could not without taking away a portion of the backyard space. Mr. Horne further stated that there is a buffer on the right side of the property. He was not in favor of erecting the structure on the left side of the property.

Mr. McCarrell stated that if he removed the breezeway roof and connected the structure to the house, he may not need any variances. There was discussion about the difficulty pulling into the structure if it was moved away from the side lot line.

Mr. Kilroy stated that he would be building the structure for his own personal use only. Ms. Fennell stated there may be comments pertaining to the applicant's website with his business address and hours of operation, however, the Board would not be entertaining those comments. Planning Commission would address a home occupation request. Mr. Gramm stated that something could be added to the resolution stating that the structure could not be used for a business.

Ms. Fennell opened the floor for public comment.

Mark Sheridan, 521 Cobblestone was not in favor of the variance. He is a 20 year resident of the Highlands subdivision. The meeting notice mentioned a residential garage as well as an accessory structure. He asked if it was one in the same, or two structures. Ms. Fennell stated that it was one in the same. He spoke to the variance request pertaining to the size. The structure proposed is 24' x 48' equaling just under 1,200 square feet. He considers this a significant size structure. He asked for confirmation on the height of the building. The plans show 18' 1 1/2" tall. With 3/4 acre lots in mind, he felt that the structure represented 2 1/2 times the reasonable size. He stated that based on the size of the vehicle he drives; he could fit 11 vehicles in the garage. He stated that he would be opposed to the five foot side yard variance if it affected his property line. He stated that the meeting notice listed the neighborhood as R-3. He asked for verification that the neighborhood is zoned residential. Ms. Fennell verified that. Mr. Iammarino stated that the applicant was applying for a residential garage. Mr. Sheridan referred to the applicant's website, which he reported has been up and running for more than two years. Ms. Fennell stated that if Mr. Kilroy intends to operate a business out of his home, he would need to apply to the Planning Commission. Mr. Novotny stated the variances in front of the Board of Zoning Appeals are for size and placement, and it is not to determine whether or not the applicant is running a business out of his residence. Mr. Sheridan did not realize that there are separate boards for Planning and Zoning issues. Ms. Fennell stated that the Planning Commission would decide if someone would be granted a Conditional Zoning Certificate to run a business out of their home. She explained that size and location for the garage is all that would be determined by the Board of Zoning Appeals.

Dennis Ofiara, of 409 Millpond Road was in attendance. He was looking for clarification on the barrier that was referred to at the side of the property. The barrier that was referred to was in fact, Mr. Ofiara's woods. He asked if he would have to maintain that wooded area because of someone else's structure. He asked what would happen if he cut down the woods. Ms. Fennell explained that if he cut down the trees, the barrier would be gone. He would not be required to maintain a barrier, however, its present existence was acknowledged by the builder. Mr. Ofiara stated that it looks possible to add to the existing garage without being in the middle of the backyard. He was not in favor of the five foot side yard setback variance. He stated that looking over the BZA checklist, he saw no reason to approve it. He further stated drainage concerns. Ms. Fennell stated that Engineering would address drainage.

Denise Sheridan of 521 Cobblestone was not in favor approving the variance requests. She opposed the structure due to the size. When she purchased her property, she was buying into a certain neighborhood and expecting the homes to be maintained. A certain amount of growth and change is expected, however; she did not feel that rest of the neighborhood should have this structure just because it was a convenience for the applicant. She further stated that it would set a bad precedence.

Ms. Fennell asked if the couple who sent in the last email received was present. They were not.

Tom Polasky of 280 Millpond Road was not in favor of the variances. The Highlands subdivision is noted for spacious, private lots. He appreciates the zoning regulations. The size and location of the structure is unacceptable. He further stated that the allowable 576 square foot accessory structure is reasonable. He stated that there are many other properties around Northeast Ohio that can accommodate larger pole barns. He thanked the Architectural Board of Review for their work approving tasteful additions and hoped that this project would not move forward.

Darryl Hunt of 260 Millpond Road was not in favor of the variance request. Approving a structure of this size, would have an adverse effect on the property values in the neighborhood.

Russell Post of 429 Millpond Road was not in favor of the variance request. The five foot variance request for the side yard setback would affect his property and his neighbor. He asked the Board to uphold the zoning codes for placement and size of the structure. He felt the size was too large.

Randy Gorcz of 370 Heritage Road was not in favor of the variance request. He is involved with zoning for the State of Ohio. He stated that the job of zoning is to make sure that projects comply. In his work with zoning, it was the practice to ask the community where a structure would fit and if the community had interest in erecting a project at all. At that time, they would address community concerns. He and his daughter, who also lives in the Highlands subdivision, are very upset. The proposed structure is twice the size allowable and will impact the entire community.

Mr. Novotny asked if 548 Fox Run Trail was present. The property owner had submitted a letter of support. They were not present. He also asked if the owners of 381 Millpond Road were in attendance. They had not submitted a letter of support or opposition. This parcel would be impacted by the 5 foot side yard setback. A member of the audience stated that the wife is ill and that the couple is not presently in the home.

Joe Kokal, 279 Millpond Road was not in favor of the variance request. He is a 30 year resident of the Highland subdivision. He considered the neighborhood to be a pristine family environment. He further stated that the homes are well maintained and the residents have not invested years and money into this neighborhood to have someone else move in and build something they want that is not good for the community. He asked the Board to consider the quality of life for the rest of the neighborhood.

Ms. Fennell closed public comment. Before she asked the applicant to come up for final comments, she stated that letters in favor of the variance were received from the following:

540 Cobblestone Road – John Kushan  
550 Cobblestone Road – Bob Messner  
312 Millpond Road – Deanna Otto  
342 Millpond Road – Clark Case  
509 Cobblestone Road – Kyla Courtad  
503 Fox Run Trail – Giana Grossman  
505 Fox Run Trail – Tim Courtad  
548 Fox Run Trail – Mark Grippi

Letters were included in the member's packets opposed to the variance request from the following:

429 Millpond Road – Russ Post  
488 Cobblestone Road – Janis and Fred Pesa  
409 Millpond Road – Dennis Ofiara

Mr. Kilroy stated that the footprint of his proposed building is no larger than some of the neighbor's in-ground swimming pools. He further stated that 170 Ben Shaw Road put a four car addition on their home last year. He also reported that the four car addition was larger than his project and erected on a smaller lot. He reported that 503 Fox Run has a large pool, pool house and bar that are tasteful but take up the same amount of space or more than his proposed structure. There was conversation about whether or not Mr. Kilroy would need to ask for a variance if he was adding on to his existing garage.

Mr. Kilroy also reported speaking to Mr. Ofiara previously about his project, offering to erect a fence in the event that the barrier of trees is ever cleared to hide the foundation of the structure. He understands that the Highland subdivision is a nice development. He chose his parcel because of the size and so that he could develop it to fit the needs of his family. He stated that his plan is tasteful and well thought out. He did not feel it would detract from the other additions or accessory structures erected in the neighborhood.

Mr. McCarrell asked if any of the eight people in support of the variance were in attendance. Mr. Kilroy stated that it was enough to ask for the letter without subjecting them to attending the meeting as well. Mr. Novotny stated that the project before them was not equivalent to the properties of 503 and 505 Fox Run Trail. Those properties are big and the projects were different. That would be comparing apples with oranges. Mr. Gramm asked the applicant how many vehicles he could fit in the garage. He planned a possible four vehicles in the unit.

The Board discussed the application among themselves.

Ms. Fennell asked the Board to look at the side yard setback first. She felt that side yard setback variance could be avoided if the structure were smaller or redesign to attach to the house. Therefore, she felt the applicant's predicament could be resolved another way. Mr. Iammarino stated that the side setback was not as substantial as the size of the structure. Mr. McCarrell and Mr. Gramm agreed. Mr. Novotny agreed with the staff report and his fellow board members that the side yard setback was not as substantial as the size of the structure.

Ms. Fennell addressed the size variance. She stated that the board members have already stated that the size variance request is substantial. She further stated that he could expand his living space into one bay of the attached garage and build a 576 square foot detached garage and comply with code. That should be sufficient. She explained that some of the other projects erected in the neighborhood were compliant with code. Mr. Novotny read from the staff report and stated that he agreed that the applicant could build a smaller garage that would comply with code. Mr. McCarrell agreed with the staff report as well. Ms. Fennell stated that the property would still yield an economic return if the variance request was denied. The property has a two car garage currently. Mr. Iammarino stated that he tries to work with the homeowner, however; in this instance he stated that there are alternative methods to meet his requirements.

**MOTION: To grant the side yard setback variance as requested**

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

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

Nays: Ms. Fennell

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

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

Yeas: None

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

**MISCELLANEOUS:**

None

**ADJOURNMENT:**

**MOTION: To adjourn the meeting**

Mr. Gramm moved to adjourn at 7:51p.m. Mr. lammarino seconded, and the motion carried on a unanimous voice vote.

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Terese Fennell - Chairman

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Marie Lawrie - Clerk