



Building and Zoning Appeals Minutes

Meeting held in Boards & Commissions, Monday, May 9, 2022, at 6:00 p.m.

Members Present: Edward Franks, Mike Svasta, Randall Roberts, and Greg Seifert.

Members Absent: None

Also Present: Bill Stuart, Carrie Mayer, Jeff Jagger, Eva Marie Bass, Kathleen and Dean Saber, Nate Leppo, Zac Cowan, and Mary Botts

Approval of Minutes: Minutes of the April 11, 2022, meeting, motion to approve by Randall Roberts, seconded by Mike Svasta, motion passed 4-0.

Meeting called to order by Chairman Edward Franks at 6:00 p.m.

Attendees sworn in.

Case #22-007

This is a request by Michael Stuart, applicant, for approval to construct an accessory building with an area of 1,600 sq. ft. located at 3813 Gilbert Road.

The property (parcel 56-00451) has frontage along Gilbert Road with an approximate area of 0.93 acres and is zoned R-3. The applicant proposes constructing a garage with dimensions of 40 ft. x 40 ft. (1,600 sq. ft.). The maximum allowable area of a single accessory structure for a parcel ½ acre to 1 acre is 800 sq. feet.

The property currently has one existing accessory structure on the property. The existing detached garage is approximately 700 sq. ft. With the proposed garage, the total area of accessory structures on the property would be 2,300 sq. ft. in total. The maximum allowable total combined area accessory structures for a parcel ½ acre to 1 acre is 800 sq. feet.

The applicant is requesting the following variances:

Variance (800 sq. ft.) from the maximum floor area of 800 sq. ft. for a single accessory building on a parcel with an area of ½ acre to 1 acre - C.O.S. Section 1143.07 (b).

Variance (1,500 sq. ft.) from the maximum combined floor area of 800 sq. ft. for a combined floor area of all accessory buildings on a parcel with an area of ½ acre to 1 acre. - C.O.S. Section 1143.07 (b).

Mr. Stuart stated he was asking for a 40' x 40' pole barn and what I would like to do is I want to put the middle as a workshop for my hobbies and the side ones I have historical vehicles for parking and restoring the vehicles. It is going to be a 3 car garage so the two outside bays would be for car storage for vintage vehicles and the center is a hobby shop. Where we are located at, we are where Route 8 runs behind us. There is green space on the south side of us from Lowe's and Walmart. On the north side of us it is a vacant lot that has been for sale for years. It is a five acre buildable property on that side. Mr.

Franks asked what the limitations would be on a one acre parcel or more? Mr. Leppo said it would be 1200 s.f.

Mr. Svasta said I can imagine there is a lot of noise with Route 8 so close. Mr. Stuart said we sit on the patio a lot and Route 8 is very noisy and I figured this would kind of block where the location I chose is kind of in the center of that property back there. I figure it would block some of that noise coming through there. Obviously, I don't think they are going to build a wall just because there are only a couple of houses on that so I figured that would kind of help block some of the noise coming through there. There is nothing on either side of us so I don't think it would disturb anybody. They are building new houses across the street there. Mr. Roberts asked if he had talked with the Building Department yet about any of this? About the structure or anything? Mr. Stuart said no. Mr. Roberts said the reason I ask which may be helpful to you and something that may affect your appeal is, I am assuming because you are here, this is going to be issued as a residential accessory structure under zoning which will then be looked at by the building department as a residential accessory structure and in the building code, the maximum pole barn width allowed in the code before you go to an architect to have your drawings done or go to a different design such as a regular foundation is 36', so what is going to probably occur is when you submit this to the building department, they are going to say this is outside the scope of the code and deny your application and you will have to take other steps. One step would be reduce the size of the building which would reduce the square footage by 160 s.f. which would theoretically change your appeal with the numbers we have so I wanted to mention that to you. Mr. Stuart said the reason I asked for that size is just for what I was going to do with it. It is going to be 10 feet in between so I would be able to park the cars. Mr. Roberts said this is for you to understand that when you do go to the building department if they follow Section 328 in the code, which specifically spells out pole barn, it says in Section 1 the maximum allowable width is 36' so the designs that you come up with Holmes Lumbar, which are good designs, they typically follow the basics of the code and the building department would have to say I am sorry, we can't accept this. You need to do something different, something different can be as simple as minimize the width from 40' to 36' or it could be changing the design from pole barn to an alternate design which then you could go to 40 x 40', or the third alternate would be for you to have an architect design the building and not use Holmes Lumbar which I just want to make you aware of the process. In my opinion, it would affect the square footage of the building but it would go down a little bit so if we agree to this, it would be acceptable but we just want to make you aware of that as you move forward. Mr. Franks said if we approve an 800 s.f. variance and you only need 700 s.f. of it, you are still o.k.

Mr. Seifert asked do you know anything about the Lowe's land next door? Is that deeded as green space? Mr. Stuart said Lowe's and Walmart bought that property for green space is what we were told. Mr. Roberts asked Ms. Botts if we had any comments from the neighbors and she stated no. Mr. Stuart said he would go to the neighbors but there are no neighbors. Mr. Franks said this is one of the first large accessory building that I have actually not had a major problem with it just due to its location. I went out there earlier today and that is about as isolated as you can get.

Motion to approve Case #22-007, Variance #1 (800 s.f. max floor area), motion to approve by Randall Roberts, seconded by Greg Seifert. Motion Passed 4-0

Motion to approve Case #22-007, Variance #2 (1,500 s.f. max combined floor area), motion to approve by Randall Roberts, seconded by Mike Svasta. Motion Passed 4-0

Case #22-008

This is a request by Jeff Jagger, property owner, for approval of a variance to construct a front addition in the form of an extension on the garage and covered front porch.

The property (parcel 56-05982) has frontage along Clearbrook Drive. The property is zoned R-2. The structure currently sits 40 feet off the front property line. The proposed garage and porch's depth from the current structure is shown at 7 ft., defining a proposed setback of 33 ft. from the front property line. The required front setback for R-2 zoned property is 40 feet.

The applicant is requesting the following variance:

Variance (7 ft.) from the current zoning regulations requiring 40 ft. front yard setback - C.O.S. Section 1143.04 (a).

Mr. Jagger we have lived in Stow for twenty years and I have a family of five living there. We contemplated moving in Stow, we want to stay in the Stow area and it is not a feasible thing for us at the moment so we thought this would be the next best step. What I thought we could do is we bring the garage front forward 7 feet allowing me to have almost a full garage bay behind it with storage. We have no basement and we have limited attic space which we have a Cape Cod style home so we can have almost like an attic as a garage in the back of the garage area.

Mr. Franks said the house addition in the back has no problems it is just the front extension encroaching on the front setback. Mr. Jagger said we constantly sit in the front yard with neighbors and stuff like that so we thought it would be nicer to have, instead of just lawn chairs on the lawn, a porch along with the garage addition.

Mr. Svasta said the only comment I have is that I went out and visited your place. Personally I have no problem with what you are proposing to do. Normally I also look at the neighborhood to see if there have been any other variances on that street and it looked like everybody is in compliance with the setbacks and to me it looked like you would be the first one to take a variance for this modest encroachment, I don't think it is excessive, in my opinion. If there had been anyone down the street that had built on a porch years ago and they had gotten a variance that would be in your favor. Mr. Jagger said there are a few down the street that have built deck styles on the front. It is five or six houses to the east of us that put a deck style on. Mr. Seifert said you may not have noticed due to curve in the road. I had the same thought and me being one of the newest members of the Board I wondered how you members felt about this requested variance. Mr. Roberts said just a comment to that and to the applicant, we look at so many different things but I am pointing it out that some, you can't be the first to have a need or requirement as long as it makes sense and it is logical. I think the aesthetic value that it is going to add to the neighborhood is strong and to your particular house, I think it is going to be an attractive addition in a moderate standpoint and it will give you what you need. As you said, there is no basement so the biggest thing I looked at as well as how does the neighborhood stack up and is it going to be obviously incorrect and with a modest approach, it is not excessively dramatic, I really don't have any other questions because your drawings are very good, you have before and after photographs that is clear and concise so we can understand exactly the game plan. Mr. Franks said when I was out there today and was trying to envision what that would look like, and I always try to get a mental image, and then I try to look down our street each way and I go to the other house and look your way and look back. Mr. Jagger said the front walk is almost exactly where the front porch is going. Mr. Svasta asked Ms. Botts if she had heard from the neighbors. Ms. Botts stated we did have one neighbor, Mr. Simich, who was for the variance. Mr. Jagger said he had talked to all his neighbors before he submitted anything. I showed them plans and I wanted to make sure I was very open. We really like our neighborhood and we wanted to know if anybody had any questions or concerns about it and I wanted to make sure we didn't cross anybody.

Motion to approve Case #22-008, Variance #1 (40' front yard setback), motion to approve by Mike Svasta, seconded by Greg Seifert. Motion passed 4-0.

Case #22-009

This is a request by Kathleen Saber, property owner, for the approval of a variance to place an accessory building (shed) on their property.

The property (parcel 56-09895) has frontage along Silver Springs Drive. The property is zoned R-2. The shed is 12 ft. wide by 8 ft. deep (96 sq. ft.), and the proposed structure location is 4 ft. off the side property line and 11 ft.-9 in. from the principal building (house). The required distance for any detached accessory building is 6 ft. from the side lot line and 12 ft. from the principal building.

The applicant is requesting the following variance:

Variance (2 ft.) from the current zoning regulations requiring 6 ft. between any detached accessory structure and side lot line. - COS 1143.07 (a)

Variance (3 in.) from the current zoning regulations requiring 12 ft. between any detached accessory structure and a principal structure. - COS 1143.07 (a)

Mr. Saber wanted to thank the board for allowing him to be here. I met Mike and Edward today and thank you for coming over. As you can tell, I have a shed on the easement area for the gas line. I know it is currently 3 feet from the property line and we were proposing to move it off the easement on the other side of the tree. We can't get any closer and we are asking for 4' instead of 6' so it is not too close to the deck. I have an 8 year old daughter and she has a lot of toys and that is where the toys are going in the shed so it is time to declutter the garage. Ms. Saber said just to add we were told by the company who came to put the shed up that we only needed 3' initially so that was one of the many things that was wrong with the shed. Mr. Leppo stated they had submitted multiple applications. We approved one, we did not have information about the gas pipe line. They have done their best to comply with the City of Stow but their easement makes up essentially their entire back yard. Mr. Seifert said his question is how far that easement is. Mr. Leppo said variances are created for difficult situations and this is a difficult site. Ms. Saber said we had no idea that it had even grown or changed companies or anything. Mr. Svasta said you signed the easement originally. Ms. Saber said no, we never knew about it, none of our neighbors knew about it. Mr. Saber said we never signed anything with them. Mr. Svasta asked if there was a prior previous owner? Mr. Saber said from when it was built in 1981, they are not the original owners. Mr. Svasta said do you have a copy of the easement? Ms. Saber said no. So Mr. Svasta said we really hadn't checked the language in the easement of what it says as far as what can be done and what can't be done. Ms. Saber said we had a very headstrong man come from there (gas line) and we said you can look up and down our street and there are things all over the yards. There are pools, fences, and decks. We said we would move our shed to the back and they were not okay with that. Mr. Svasta said this was a verbal that you got from a field man that was out there patrolling the easement? Ms. Saber said yes. Mr. Franks asked if they showed them any documents as to defining where the easement is? Ms. Saber said no, it threatened us with legal action if we didn't move it. Mr. Svasta said that is still your property, that property belongs to you. Ms. Saber said that is not what he told me. Mr. Svasta said that is your property now, the previous owner, maybe they were paid. Ms. Saber said they were, the original owners. Mr. Svasta said you need to get that document to see what rights you have, you may have the right to put up this shed in the easement if it is not on a foundation or not nailed down. Ms. Saber said there is no foundation and it is moveable. Mr. Roberts said in a real estate transaction, you would obtain or be provided with a copy of the easement as part of the real estate transaction and so that is part of the law so you should look into that and this would be beneficial to you and then you can start searching with the company going back to the signatures that went with it and prior approvals. They give you some information and for your benefit, because we don't know what is on the property either. Mr. Saber said I don't mind moving it 6' from the property line but it will still be in the easement. Mr. Franks said did they hint that the easement came all the way up to your deck? Mr. Saber said it is all the way up to the tree. Mr. Svasta asked how wide is the easement? Mr. Saber said they said it is like 12' from one side of the gas line so it is basically like our whole yard. Mr. Svasta said so basically it was just this fella that

was walking around, patrolling the line and he is threatening you with nonsense. Mr. Saber said I had contemplated talking to somebody about it but I figured they made exemption to the neighbors. Ms. Saber said he started talking about I am going to make them get a door in their fence and this tree is going to come out and I told him he wasn't cutting down my tree. Mr. Roberts said I know they are difficult sometimes and I know by us we had a pipeline that goes through the edge of the golf course by us on the south side. There were trees and shrubs that were over the top of the pipeline and they all had to come out. Mr. Franks asked what gas company is this easement? Is it East Ohio Gas or a private company? Mr. Roberts said probably a private. Mr. Saber said he knew the information but couldn't remember. They are right there on Silver Springs Park. You can see the marking pole, it is not Dominion. Mr. Roberts said I am pretty sure a private. Mr. Saber said I believe it changed recently in the past three years because they weren't like that before. I remember them putting up flags but that was it. Mr. Franks asked do you intend to move this shed from where it is now forward so the back of the shed is more or less at the back of your deck? That is what the drawing says. Ms. Saber said yes over and up a little bit and that would be across from the deck. Mr. Roberts said that is what we are seeing here. Ms. Saber said I wouldn't mind keeping it where it is and moving it up 6'. Mrs. Svasta said if it was me, I would ignore the gas company. They have to do maintenance on that pipeline in your yard they would tear it down. Mr. Seifert said they do maintenance on that pipeline on the other side of Stow Road? It seemed like they were recently doing something. They were staging and I was wondering if they are planning on doing something east which was why he was there. Mr. Leppo said they are, don't ever ignore an easement, don't ever do that. If you need 3 feet just because your neighbor highly recommends against the 2 feet, make sure you are requesting 3 feet. The neighbor to the side is very interested in this. Mr. Roberts said Mary, we should read, for the record, the letter we received. Ms. Botts read the letter:

Dear Stow Building & Zoning Appeals Board and other interested parties,

*This letter is in regards to Case #22-009 and the request of Kathleen Saber for a zoning variance. I own the adjacent property and oppose such an approval. The request by the applicant should be denied. The applicant erected a shed in violation of zoning code, without a permit, and infringed on the regulations that a detached accessory structure be 6 feet from the property line. Kathleen Saber is currently requesting a 2 foot variance for her shed. I believe the shed to be closer to the property line than 4 feet and a variance larger than 2 foot would be needed. Regardless, as the adjacent property owner, I oppose **ANY** variance for the applicant and **demand** that the structure be removed or placed in a location that is compliant to the City's zoning code. The shed was erected without my knowledge and I do not consent to having her structure that close to my property line. It is my belief that the structure would devalue my property as well as making my property more difficult to sell. I urge all members of the board to deny the applicant's request and to make the applicant abide by the zoning requirements as is set forth in the City of Stow's Building and Zoning Code. Sincerely, Adam T. Ritterbeck*

Mr. Svasta said I called Mr. Ritterback and spoke to him on the phone because I thought maybe there was some underlying dispute between you two (addressing Ms. Saber), is there something else going on? Ms. Saber said there absolutely is, that is a personal thing. Mr. Svasta said well one solution would be to move the shed to the other side of the property and it seems to me that you have plenty of room there. Ms. Saber said not from the other's property line we don't. Mr. Svasta said you still need a 6' setback but It looked like there was room between your brick patio and the property line, just gauging where your grass is being mowed. I just eye-balled it and didn't measure it. Mr. Saber said our property is kind of weird and I was not aware that it could fit over there and that was my whole reasoning. It can't be close to the house structure? Mr. Saber said the reason why we are here because you guys sent us a letter saying it had to be moved so that is why we asked for the variance. If I need to move it 6' that is fine. The gas line people, they have given exceptions. I know it is right on the line and it could be moved a little bit to the left and then 3' over and it is kind of in the easement but I am going to have to dispute them. Ms. Saber said I don't believe there is enough room on the other side, do you believe that there is? Mr. Svasta said eye-balling it looked to me like there is room. Mr. Roberts said I thought the same thing

but I wasn't so concerned about that, I was looking and more focused on that side. Mr. Seifert said it is 17' feet from the west side of the house to the west property line and 17' from the east side of the house to the east property line so the distance is the same on either side and if that deck is coming directly off the back of the house on both sides, then it is an identical situation on either side of the house so I think you are still looking at a variance either way. Mr. Franks said he had a question about the drawing, again that 17' dimension from the property line to the edge of the deck and the shed takes up 8' of that and then you are showing 4' to the property line and almost 12' to the house and that adds up to 24' and it is only 17' in there, something is wrong. Mr. Seifert asked if the deck lines up with the back of the house? Mr. Franks said I think it is flush with the house. Mr. Saber looked at the drawing the board had. Mr. Saber said they have a lower brick patio. Mr. Franks said this is the side we are concerned about where the shed is. This side of the deck is lined up with the house? Mr. Saber said yes. Mr. Franks said the drawing shows 17' here, this shed is 8' and then a 4' offset and you only have 5' left out of 17' but this is showing 11.8. Mr. Saber said that is not right. Mr. Franks said if we grant variances for distance from the deck and distance from the property line you still can't put that shed in there. Mr. Saber said right. Mr. Franks said unless we greatly decrease the distance. Mr. Saber said we were only concerned about the 6', we just found out about the other 12' requirements. Mr. Franks said so the shed would have to be 12' from the building, is a deck considered part of the house? Mr. Leppo said I am not sure of the fire requirements. Mr. Franks said you have 5' between them is that enough room to get things in and out of the shed. Mr. Saber said yes, it doesn't look pretty but it is definitely big enough. Mr. Franks said you don't know where that pipeline runs through here. Mr. Saber said it is right at the corner of the existing shed so it goes across here. They say it is 12' on each side. We didn't know about the 12' on each side requirement, we thought it was like 5 or something like that. I thought initially if I just had it moved a little bit, I have a tree right there and if I had it moved a little bit I would be okay because I would be flush with all the other structures. There are pools and everything else that were right there so I think I have a case against them if I have to ask for an exemption but I definitely have to move it a little bit. Mr. Franks said what about moving it way back here? Mr. Saber said right there are a couple of issues, it floods and always has water and I have a little garden and I thought by moving it on this side and that is where you guys came once and approved it but the gas line said no so that is what we are trying to find different solutions. Just literally a week ago, my neighbor, not Adam, just put a shed back there, he just built it and we told him get ready for the gas line people to come over and knock on your door. I thought about putting it back there, there are trees but I don't mind moving it there if I have to. Mr. Svasta said it seems like we need a property plan with the centerline of the pipeline on that site plan and it needs to be marked and get a copy of the easement with the restrictions. Mr. Svasta said he saw a few pipeline markers, not on Mr. Saber's property but they are on the access where people can park and stuff. Mr. Svasta said there are too many unknowns. Mr. Roberts said I was going to say that probably tonight, I would vote to table this until we get a little more information where we can help you as well, rather than just say no or go away. The fact that we received a public notice of the fact that we have a letter from a neighbor is fine but for the board when people tell me in bold letters that they demand something, I don't scare that easy. Mr. Franks said the gas line people are taking claim of everything from your back of your deck to your back property. Mr. Saber said I really appreciate you guys understanding my situation on this because I am okay if I have to put in 6' to make you guys happy. Mr. Saber said on the last case about talking to your neighbor, I did want to ask him about the question, I talked to his wife and he said he was busy right now and I never got around to talking to him again.

Mr. Franks said I think it would be better to have more information on that pipeline and easement location. Mr. Roberts said I think we can assist our citizens better if we would have that information and be able to guide you much better. Mr. Svasta said to call OUPS number and have them stake it (Phone 811). They will come out and mark utilities. Ms. Saber said so when they come out and do that, should I just take pictures of it then and document it or do you want information? Mr. Franks said add it to your drawing and measure where those flags are. Mr. Saber said I have pictures of the flags but I don't have that with me. Mr. Roberts said mark it on your drawings where they mark the property, take a photograph and get dimensions off of your deck, your backyard, so it is clear dimensionally where the pipeline is and

where the markings are so that we have that to work with. Mr. Franks said he told you 12' on each side of the pipe is what he told you? Ms. Saber said it is like something that took up our whole yard. Mr. Franks said it might be 25' each side. Mr. Saber said he found the pictures, this is the 5' and this is where the shed is right now so it is right on the edge, that is why I thought if I move it a couple of feet out they won't be on me as much. Mr. Franks said even if that is the pipeline here, then you have room back there. Mr. Franks said see if you can find out what the company name is. Ms. Saber said she had that information at home. Mr. Franks said they have rights to that easement, there is no question about that, it is a legal easement that they have rights to and in order for them to enforce it, they have to tell you where it is so that you can work around it so if you press them or the utilities protection marking service that is the first step and we can table this until we get more information. Mr. Saber said that works for me. Mr. Seifert said you can pick it up and move to the back of the property line on the other side of the easement you won't have to come back. Mr. Seifert said if you aren't in their easement you won't have to deal with them. Mr. Leppo stated that the permit in the back location has already been approved. Ms. Saber said that is where the gas line is and that is the only reason why we didn't do that. Mr. Saber said we were ready to move it there and they said no. Mr. Franks said they need to show you where they are. They can't just say we have your entire back yard. Mr. Roberts said when you call the Ohio Utilities Protection Line (811), you get them out and explain to them that you want to have the shed, that you need to move it but you need all the utilities marked so they will mark electric and all the other things as well but there is a gas line at the rear of the property that they will mark. If there is a pipeline they will mark that and they will give you the information. Now you might have to then contact the pipeline company to get the details of the easement for the validity of what you need to know. It is your property and you have the right to know where the pipeline and easement encroaches and encompasses and once you know that, you will know what you can do because it may work out where there may be just a spot for that shed in the back of the property. Mr. Seifert said it should be part of your deed and whoever holds your mortgage you can ask for a copy of it. Ms. Saber said they said it switched since then and it was increased. Mr. Svasta said I don't know how they can do that without you signing off on that. Ms. Saber said we had no idea and nobody knew, it wasn't just us but the other neighbors are like what are they talking about? People were building things and not having any idea. Mr. Saber said I will have to look at my paperwork because there are like 30 pages in there. Ms. Saber said at least we have a game plan now. Ms. Saber asked who she should send further information to and Mr. Leppo said you can send it to me.

Motion to table Case #22-009 made by Edward Franks, seconded by Greg Seifert. Motion passed 4-0 to table until further accurate information is available.

Other Business: Mr. Svasta said he talked to Mario Fiocca, my Councilman and asked him why we do not have a Zoning Compliance Officer. He said as far as Council is concerned, he was not aware that this was before them. He thought that was a Mayor's appointment. I told Mr. Fiocca to call him. I am not sure if he did or not. I think there is a need for a Zoning Compliance Officer. Mr. Seifert stated we could write a letter from the Building and Zoning Appeals. Mr. Leppo said when I bring it up in a few weeks, if you want to write it to Council. Mr. Roberts asked if this would be a part-time or a full-time position? Mr. Leppo said it would have to be full time. We have someone now who does it two hours a day and that is way above her weight limit and what she is able to do but two hours a day is nothing for 17 square miles.

Adjournment: With no further business to be discussed, motion to adjourn by Randall Roberts, seconded by Mike Svasta, meeting was adjourned at 7:00 p.m.

Edward Franks, Chairman

Mary Botts, Secretary