

AGENDA
BUTLER COUNTY BOARD OF ZONING APPEALS
BUTLER COUNTY ADMINISTRATION CENTER
130 HIGH STREET
HAMILTON, OHIO 45011
November 16, 2010

I. Opening

- A. Roll Call Mr. Gary Salmon
 Mr. Thomas Bevington
 Mr. Alan Daniel
 Mr. Henry W. Philpot
 Ms. Lee Steenken

II. Approval of Minutes

- A. October 19, 2010

III. New Business

- A. BZA10-16V Michael & Lisa Murphy
 7161 Elk Creek Road
 Middletown, OH 45042
- B. BZA10-17V Richard & Nancy Ann Munafo
 7194 Hetzler Road
 Middletown, OH 45042
- C. BZA10-18V Brandon M. Carr
 3881 Stillwell Beckett Road
 Hamilton, OH 45013

IV. Adjournment

REGULAR MEETING: Tuesday, November 16, 2010
Butler County Government Services Building
Conference Room 1
315 High Street, 1st Floor
Hamilton, OH 45011

CALL TO ORDER: Mr. Bevington called the meeting to order at 7:00P.M.

ROLL CALL: Mr. Thomas Bevington
Mr. Alan Daniel (arrived after approval of minutes)
Mr. Henry W. Philpot
Mr. Gary Salmon
Ms. Lee Steenken

MEMBERS ABSENT: None

STAFF MEMBERS: James Fox, Zoning & Floodplain Manager

APPROVAL OF MINUTES

Mr. Salmon made a motion to approve the minutes from the September 21, 2010 meeting. Ms. Steenken seconded the motion. Motion carried.

AYES: Salmon, Steenken, Philpot, Bevington

NAYES: None

Case No. BZA10-16V
Michael & Lisa Murphy
7161 Elk Creek Road
Middletown, Ohio 45042

Mr. Michael Murphy, 7161 Elk Creek Road, Middletown, Ohio 45042, said he is here to build a pole building in the back of his property and get the building within the 25 foot area.

Ms. Steenken asked what the applicant's reason is for wanting less footage.

Mr. Murphy said it would be more aesthetic where he wants it closer to the property because he has a pond with a row of black walnut trees and if he moved it out to the required 25 feet he would have to rip out some of the walnut trees and he would prefer to

move it over just a little bit. He added that his neighbor's property is nothing but woods and he spoke with him previously to this and he had given me a letter saying it was fine with him.

Mr. Daniel asked if the applicant would just go across the bridge (inaudible).

Mr. Murphy replied that he has two (2) bridges – a walking bridge and a road that goes over the creek and it is on the border and there is a tree line of pines that go up there.

Mr. Daniel said he saw the walking bridge but did not see the other and he was just curious.

Mr. Murphy said if you went straight up that road and follow it up the hill it would go directly in to the back of the barn.

Mr. Daniel said, for the record, the Madison Township Trustees have no objection to this.

Mr. Salmon asked the applicant why he needs the pole barn.

Mr. Murphy said he has a 7n existing barn but has a lot of yard equipment that he uses and they recently purchased a recreational vehicle and he would like a barn big enough for all that.

Mr. Salmon asked the applicant if he intends to have someone live in the barn or run a business from the barn.

Mr. Murphy replied no.

Mr. Bevington asked the applicant how high the peak of the barn will be.

Mr. Murphy said the door itself will be 13 foot and should be a 4/2 pitch so that would be an additional five (5) feet, so about 18 feet.

Mr. Murphy said there is a photograph of the proposed barn in his file.

Mr. Bevington asked the applicant how long he has resided there.

Mr. Murphy replied seven (7) years.

Ms. Steenken asked if there will be utilities to the building.

Mr. Murphy said no, not at the present time. He added that he has water and electric in his other building and he does not plan on putting any water in the new building but at a later time he plans on putting electric in the new building.

No further questions.

TESTIMONY IN FAVOR: None

TESTIMONY IN OPPOSITION: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS

Mr. Fox said BZA10-16V, Michael and Lisa Murphy, 7161 Elk Creek Road, Middletown, Ohio 45042, the request is to build an accessory structure closer to the side property line than zoning allows.

Staff Comments are as follows:

1. The property is zoned A-1 Agricultural.
2. This area is Agricultural in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the Board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following condition:
 - a. A Building Permit is required.

Mr. Philpot made a motion to approve the request for the variance, Case BZA10-06V, for which a building permit will be required. Mr. Daniel seconded the motion. Motion carried.

AYES: Philpot, Daniel, Steenken, Salmon, Bevington

NAYES: None

BZA10-17V

Richard & Nancy Ann Munafo
7194 Hetzler Road
Middletown Ohio 45042

Ms. Nancy Ann Munafo, 7194 Hetzler Road, Middletown, Ohio, said her husband and she are in the process to build a new home on their 101-acre property and the new home will be 1,000 feet from the nearest property on the west side and about 600 feet from the north side and they are requesting a temporary variance to live in the old house while they are building the new house and they are doing farm operation there and want to be there to safeguard their home and property and it would save a lot of expense of moving to be allowed to do this.

Ms. Munafo said they would use the existing driveway, water source, electric and so forth and there is no plan to keep that building but they would like a little bit of time once they move out to be able to dispose of anything that might be of value in there so they proposed in their letter to request a year to do that so they can take care of some of those things.

Mr. Philpot asked how long it will take to build.

Ms. Munafo said about six (6) months and she requested a year to take out the kitchen cabinets and all of the things they would like to take out.

Mr. Salmon asked the applicant if they are talking about a year from the time they move into the new house.

Ms. Munafo said yes that is right, and there is no plan to use it as a second residence or anything like that – once they move out and vacate it they will have the house demolished, and have already made those plans.

Mr. Salmon asked if there was a historical society or anything like that in Madison Township that would object to tearing down the house built in 1869.

Ms. Munafo said she was not aware of any.

Mr. Salmon said he asked because they did this in another Township and the house is still standing because there were objections to tearing down an old house.

Ms. Munafo said the termites have done a good job at trying to demolish the home even before they moved in there and they had to put in some new support beams and other things in order to be able to live in the house and it had not been maintained when it was a rental property for twenty years.

Mr. Bevington asked Ms. Munafo when they purchased the property.

Ms. Munafo said since 1999 – they've been there 12 years.

Mr. Salmon said currently they have access going through that other property.

Ms. Munafo said yes, there is a half-mile lane there to get back to the house from the road and they own another parcel but there is no plan to use that for anything but agricultural use.

Mr. Fox asked if the deed gives the applicant legal access to cross over whoever's property that is.

Ms. Munafo said the lane is actually between two (2) properties.

Mr. Fox asked about the existing road – is it gravel or black top.

Ms. Munafo said it is gravel and they maintain it - gravel and snow removal for the entire area and also pay the taxes on it.

No further questions.

TESTIMONY IN FAVOR OF: None

TESTIMONY IN OPPOSITION OF: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS

Mr. Fox said, Case BZA10-17V,

Case No. BZA10-17V, Richard & Nancy Ann Munafo, 7194 Hetzler Road, Middletown, Ohio 45042, the request is to live in existing home while new home is being built.

Staff Comments are as follows:

1. The property is zoned A-1 Agricultural.
2. This area is Agricultural in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following condition:
 - a. A Building Permit is required.
 - b. Within one (1) year of occupancy of the new home, the old home must be removed from the property.
 - c. The old/existing house can not be used for rental or other living quarters after occupancy of the new home.

Mr. Philpot made a motion to grant approval of variance, Case BZA 10-7V, Richard & Nancy Ann Munafo, to live in an existing home while the new home is being built, subject to Staff Conditions. Mr. Daniel seconded the motion. Motion carried.

AYES: Philpot, Daniel, Salmon, Steenken, Bevington

NAYES: None

BZA10-18V

Brandon M. Carr
3881 Stillwell Beckett Road
Hamilton, Ohio 45013

Mr. Brandon M. Carr, 3881 Stillwell Beckett Road, Hamilton, Ohio, 45013, said he is applying for a variance for a pole barn which is a second structure to his 2½ car garage now and is out of room.

Mr. Bevington said he is curious why the applicant started without a permit.

Mr. Carr said he applied for the permit.

Mr. Bevington asked the applicant if he has talked with all of the neighbors, and the ones that he did talk to, are they in favor of or against this.

Mr. Carr replied they are in favor of this.

Ms. Steenken asked Mr. Carr where all of his “toys” are at this moment.

Mr. Carr said in his garage.

Mr. Salmon asked if there is a Health Board paper on this.

Mr. Fox said the Board of Health has no objection and when the applicant applied for the Building Permit the Health Department signed off on the Health Release so he is ok with the Health Department, the only thing the applicant needs to do before picking up a Building Permit is to pick up the Health Release from them and they have no objection to it.

Mr. Salmon asked the applicant if he is going to build this himself.

Mr. Carr said yes, with the help of one of his buddies.

Mr. Daniel asked Mr. Carr if he plans to have water and electric in it.

Mr. Carr replied eventually electric but not any time soon and it is basically for storage.

Ms. Steenken asked if the applicant intends to run a business from it.

Mr. Carr replied no.

Mr. Philpot asked Mr. Carr if he plans on having anybody live in it.

Mr. Carr replied no.

No further questions.

TESTIMONY IN FAVOR OF: None

TESTIMONY IN OPPOSITION OF: Mr. Ed Sanders, 2536 Millville Oxford Road, Hamilton, Ohio.

Mr. Sanders said where he lives now his mother owns the property and he is here representing her because she is too ill to come here. They got the letter about this hearing and looked into the drainage and all of the stormwater on Millville Oxford Road runs in an easterly direction and their place has been there so long there are no drainage (inaudible) anymore, it is all flat and all of their water sheets across the back at 3881 Stillwell Beckett Road and there are a lot of trees back there so it is not as wide as it used to be and when he moved there they used to mow the lot to keep it open and there is no storm water swales, ditches or drainage of any type and said he is speaking not entirely in opposition but more neutral because of the poor drainage.

Mr. Sanders said there are neighbors to the south of him and the trees in the back of their yard causes all of their storm water to come back in his yard and in the winter and spring months it is very, very wet there and said he is concerned once the barn is built that it will further stress the sheathing of the water. Mr. Sanders said he would like to see the drainage issues addressed.

Mr. Sanders said he printed material off of the County website and penciled in what is there and what was not there.

Mr. Daniel asked Mr. Sanders what he proposes as a solution to this.

Mr. Sanders said (inaudible) and said Mr. Carr said he had spoke to his neighbors, but does not recall Mr. Carr talking to him or the property owners on either side of them.

Mr. Sanders said he did speak with Mr. Carr when the applicant had his property surveyed about the wet conditions but he has never said anything about the barn.

Mr. Fox asked Mr. Sanders if the barn on his own property impede it as well.

Mr. Sanders said they elevated it and graded next to the barn so it flows away from the property and that swale is on the property line and the house has been there 50 - 60 years so there are no swales anymore – it disappeared with the tree roots.

Mr. Fox asked if Mr. Sanders actually filled their property to get his barn up out of the wet area.

Mr. Sanders replied yes and said they mowed this place (pointed to a different property on a map) when no one lived at this place, but since he's moved in they've let it all grow and it has choked down everything and the driveway going down here, Mr. Burkhardt's place of business, and the barn is right in the way of the sheeting of the water.

Mr. Fox asked Mr. Sanders if Mr. Carr were to elevate it and grade it out like Mr. Sanders did, would he be ok with that.

Mr. Sanders said right – and showed on the map where the water goes.

Mr. Fox said he does not think it is fair for Mr. Carr to incur all of the costs to correct an issue for the neighborhood.

Mr. Sanders said right – and the gray lines show there is not much elevation but what he is saying is, even these elevated barns can get very wet or it will cut off the flow of their water and be a septic nightmare as it already smells when it is backed up.

Mr. Daniel asked Mr. Sanders if he has spoken with his neighbors about his solution and maybe work together.

Mr. Sanders replied that he does not have a solution, he would like something that everyone can use and he called to find out where the water flows and they told him in an easterly direction and that is right in the way where the trees are growing and it has no place to go. Mr. Sanders said he is more than willing to take his fence down and do his part.

Mr. Bevington commented the driveway going across that back line is blocking everybody's water.

Mr. Daniel said even if the applicant doesn't build the barn, the driveway is still blocking a lot of it.

Mr. Sanders said there is a small swale along the driveway and then he has a small pipe to the south of his barn that takes the water away and the trees are not going to let the water go around the barn unless you make a ditch there at the very back of his property or a ditch on both sides – it is all very flat. There is a catch basin on Stillwell Beckett Road at the west corner of his property but that would entail a swale running all the way along his property line to the people north of him.

Mr. Daniel spoke however it was inaudible.

Mr. Daniel asked the applicant if he was putting in _____ (inaudible).

Mr. Carr said he is putting in gravel but for now it is for storage.

NEUTRAL TESTIMONY: None

STAFF COMMENTS

Case No. BZA10-18V
Brandon M. Carr
3881 Stillwell Beckett Road
Hamilton, Ohio 45013

Mr. Fox said Case BZA10-18V is a request to build a second accessory structure on the property. Staff Comments are as follows:

1. The property is zoned R-2 Residential.
2. This area is Residential and Business in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following conditions:
 - A. A Building Permit is required.
 - B. No business activity from this building.
 - C. Waive the ten (10) day waiting period.

Mr. Philpot asked the applicant when he started building this barn.

Mr. Carr said he had someone else start the building in August then got the Stop Work Order then he applied for the variance.

Mr. Fox said he spoke with Mr. Carr on numerous occasions and the applicant had two (2) options: to put an enclosed breezeway from the existing house to the existing garage and that would be considered part of the house, or apply for a variance and he felt applying for the variance would be more cost-effective for the applicant. He added that if Mr. Carr were to be turned down today, he could come in for a Building Permit for a breezeway between the existing house and the garage and build it.

Mr. Fox said the Ohio Law states we do not regulate drainage issues; it would be a civil matter and would be an issue between the property owners, but if the Board feels it is a drainage issue and would want some corrections to be done, the Board could make that a condition that the applicant put swales around to direct the water.

Mr. Carr said the way his property is, he already plans on raising the floor up to channel the water, even if that were to be a problem, but he does not see it as a problem. The back corner holds a little water when it rains but it's not like it ponds up and he can cut his grass after it rains.

Mr. Daniel said if the variance is granted, the right thing to do would be for the applicant to help his neighbors out and do it in a fashion to avoid drainage problems.

Mr. Salmon made a motion to approve the variance for Case BZA10-18V, Brandon M. Carr, 3881 Stillwell Beckett Road, Hamilton, Ohio 45013, subject to all Staff Conditions. Mr. Daniel seconded the motion. Motion carried.

AYES: Salmon, Daniel, Steenken, Philpot, Bevington

ADJOURNMENT:

A motion was made by Mr. Salmon, seconded by Ms. Steenken to adjourn. All in favor, motion carried.

These minutes represent a summary of the proceedings and do not purport to be the entire record. A complete transcription of these proceedings was taken from an audio tape by James M. Fox under supervision of the Secretary and may be obtained upon written request. Any charges associated with preparing such transcript shall be borne by the person requesting such same and must be prepaid.

Hamilton, Ohio
November 16, 2010

Tom Bevington, Chair

James M. Fox, Secretary

Lee Margraf