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AGENDA  
BUTLER COUNTY BOARD OF ZONING APPEALS  
BUTLER COUNTY ADMINISTRATION CENTER  
130 HIGH STREET  
HAMILTON, OHIO 45011  
December 20, 2011

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

III. New Business

- A. BZA11-19V      Brian Hibbard  
                         1760 Black Road  
                         Hamilton, Ohio 45013
- B. BZA11-20V      Chris Ponder  
                         1567 Stahlheber Road  
                         Hamilton, OH 45013
- C. BZA11-21V      Dallas Hopkins Jr.  
                         2321 Thrush Avenue  
                         Fairfield, OH 45014

IV. Adjournment

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**REGULAR MEETING:** Tuesday, December 1, 2011  
Butler County Government Services Building  
Conference Room 1  
315 High Street, 1<sup>st</sup> 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  
Mr. Gary Salmon  
Ms. Lee Steenken

**MEMBERS ABSENT:** Mr. Henry W. Philpot

**STAFF MEMBERS:** James Fox, Zoning & Floodplain Manager

**APPROVAL OF MINUTES:**

There were no minutes to approve.

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**NEW BUSINESS:**

Mr. Bevington said any action taken requires three (3) positive votes in order to pass. If one (1) or more of our Board members is not present tonight the applicant can have their case tabled until all Board members are present. If any of the applicants wish to table their application please let the Board know before the case is heard.

**BZA11-19V**

Brian Hibbard  
1760 Black Road  
Hamilton, Ohio 45013

Mr. Hibbard said he is here to request a variance to construct an addition to a barn and due to an error in the survey of the area back in 1993 between two (2) different parcels adjoining properties were off a little bit and for him to go back the 10 feet he needs to put it within that area for the guidelines he has. He said his property has three (3) different parcels and they had to resurvey that back then and his barn, which he did not own at the time, was on somebody else's property and theirs was on his.

Mr. Daniel asked a question however it was inaudible.

The Applicant replied yes, and said he believes that was all done in 1994.

Mr. Bevington asked the applicant if that was with the neighbor closest to him.

The applicant replied yes.

Mr. Bevington asked Mr. Hibbard if any of the neighbors had any issues with it.

Mr. Hibbard replied no.

Mr. Salmon asked what the reason is for the addition.

Mr. Hibbard said he would like to get more floor space out of it.

Mr. Salmon asked the applicant if he would be storing personal items in there.

Mr. Hibbard replied yes and added that he has five (5) children so he will use it for cars and for storage.

Ms. Steenken asked if anyone will be living in it.

Mr. Hibbard replied no.

Mr. Bevington asked if the white truck will be put away.

Mr. Hibbard replied if he means the tall white truck, it won't fit in his normal garage.

Mr. Bevington asked if there will be electric and water out there.

Mr. Hibbard said electric, yes.... water is already in there.

Mr. Salmon asked the applicant if he will be building this himself.

Mr. Hibbard replied French's Barns.

Mr. Bevington asked how close this will put it to the property line.

Mr. Hibbard said he thinks it will bring it in another foot or so.

Mr. Fox said it is going straight back but the plot plan shows it going off to the side but it is going straight back off the existing and according to French's Barns it will be about six (6) foot out, and the existing barn is about 7 ½ feet off of the property line.

TESTIMONY IN FAVOR OF: None

TESTIMONY IN OPPOSITION: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said Case No. BZA11-19V, Brian Hibbard, 1760 Black Road, Hamilton OH, 45013, the request is to build an accessory structure closer to the side property line than Zoning allows.

Staff Comments are as follows:

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1. The property is zoned A-1 Agricultural.
  2. This area is residential 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.

Ms. Steenken made a motion to grant approval of BZA11-19V with the conditions recommended by staff and to waive the ten (10) day waiting period. Mr. Salmon seconded the motion. Motion granted 4-0.

AYES: Steenken, Salmon, Daniel, Bevington

NAYES: None

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**BZA11-20V**

Chris Ponder  
1567 Stahlheber Road  
Hamilton, OH 45013

Mr. Chris Ponder, 1567 Stahlheber Road, Hamilton Ohio, 45013 said he would like to request a variance to build a structure on his property and he understands it requires a variance because he has an existing outbuilding on the property and he would also like to build it larger than what is allowed in the area.

Mr. Bevington asked Mr. Ponder if he will have electric in the barn.

Mr. Ponder said not necessarily and has not got that far yet.

Mr. Bevington asked Mr. Ponder if he will have water in the barn.

Mr. C. Ponder replied no.

Mr. Bevington asked Mr. Ponder if he plans on running a business out of his barn.

Mr. C. Ponder replied no.

Ms. Steenken asked the applicant what the intended use is.

Mr. C. Ponder said it will be for storage and he has several classic cars and lawn equipment which is being stored with family members at this time and he would like to be able to use his regular garage for its intended purpose of storing his cars in the garage in the winter time.

Mr. Salmon asked Mr. C. Ponder if he will work on the classic cars in the barn.

Mr. C. Ponder said he plans on just using it for storage.

Ms. Steenken stated that no one would be living in it.

Mr. C. Ponder said that is right.

TESTIMONY IN FAVOR: Fred Ponder, 1173 Brunner Road, Hanover Township

Mr. Fred Ponder said he owns property between Chris Ponder's property and he has two (2) rental properties between there and he is the one that got Chris Ponder to do what he did and had no idea he had to get a variance.

Mr. F. Ponder said he had a part of his driveway replaced and we sent the paperwork that there are two (2) culverts and they placed his driveway to hold that in good and to make that a level drive back through there so its really his fault why Mr. C. Ponder did this ahead of time. It will be a nice building and an attribute to the neighborhood and he will not run a business out of it.

Mr. F. Ponder said they went around to all of the neighbors and they are all happy and the property owner behind Mr. C. Ponder has 30 or 40 acres so it is not going to block anybody and they wanted to make sure no one would be bothered by it.

TESTIMONY IN OPPOSITION: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said Case No. BZA11-20V, Chris Ponder, 1567 Stahlheber Road, Hamilton, OH 45013, is requesting a variance to build a second accessory structure on the property and larger than zoning allows.

1. The property is zoned R-2 Residential.
2. This area is residential 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.

Ms. Steenken made a motion to grant approval of BZA11-20V with the condition that a Building Permit is required. Ms. Steenken asked the Applicant if the variance also requested to waive the ten (10) day waiting period as well.

The Applicant replied but was inaudible.

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Mr. Daniel seconded the motion. Motion granted 4-0.

AYES: Steenken, Daniel, Salmon, Bevington

NAYES: None

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**BZA11-21V**

Dallas Hopkins, Jr.  
2321 Thrush Avenue  
Fairfield, OH 45014

Mr. Dallas Hopkins, 2321 Thrush Avenue, Fairfield, Ohio, 45014, said he is requesting a variance to build an addition for his family due to the fact that he has such a small piece of property and there isn't much to with this land other than for (inaudible).

Mr. Fox gave some background information on this and said unfortunately Mr. Hopkins started this addition without a permit and we sent an inspector out there and Mr. Dallas came in to apply for a variance and he is asking for a side yard setback variance and a rear yard setback variance for this specific addition.

Mr. Fox said the Board members may recall, back in 2008, Mr. Hopkins came before this Board on another addition, a small addition to the back of the house, which was a rear yard variance at that time, which was approved. Mr. Hopkins does have a Building Permit in our office, it has been applied for but has not been reviewed yet, so he has applied for this variance and a Building Permit so that is where we are at today.

Mr. Salmon asked the applicant if he was doing the work himself.

Mr. Hopkins replied yes and that he owns his own construction company.

Mr. Bevington asked Mr. Hopkins where he will park all of his vehicles.

Mr. Hopkins replied he will park them in the front and uses the front yard for is parking.

Mr. Bevington said the applicant is running out of room.

Mr. Hopkins said there is no accessible way to the back except through the side yard. He added that the people out back there do not have a problem with it.

Mr. Fox said Mr. Guenther is here so he may have something to add.

Mr. Daniel asked the applicant if he is in the construction business, why didn't he get a permit and did he get a permit with the second addition.

Mr. Hopkins replied no, he did not. His father, who is now deceased, expressed to him that when you rebuild a deck that has been there for more than a year, then you can build upon it and you do not need to permit it. He does not do alot of room additions, he installs windows mostly and stuff

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like that – not big jobs like this here. He did not read the permit side of it, which if he had read the permit side; he would know he could not do it unless he applied first.

Mr. Fox said he had a long discussion with Mr. Hopkins and Mr. Hopkins now understands when he has to apply for a permit now and he will not forget.

Mr. Hopkins agreed.

Mr. Fox said, speaking for Mr. Hopkins, he went down there to see what was going on, and he has done a really good job with the house and it is one of the better looking houses in the neighborhood. He added that he is not sure if Mr. Hopkins did this, but it looks like there is new brick, a new front door, brand new driveways and walkways and so he has really improved the property and we just need to make sure he gets a permit... which he has applied for, and make sure he gets the proper inspections.

Mr. Fox said one of his comments, which was added today, he got a comment that the addition will comply with all Residential Building Codes. When an inspector went out there, he noticed there were a few issues that would need to be addressed and Mr. Hopkins has addressed it. There may be some other issues that would have to be worked through but between the Butler County Building Department and Mr. Hopkins it will be taken care of rest assured.

Mr. Daniel said he made a comment that at some point someone said, or someone thought, that Mr. Hopkins' building was on someone else's property.

Mr. Hopkins responded and said he knows where it is at now.

Mr. Daniel said so it is not on the other person's property now.

Mr. Hopkins replied no it is not. At first it was, and he rescued that to make it right because that person gave him that property and told me he could have it.

Mr. Fox asked if that is P.K. Pressure Clean.

Mr. Hopkins said yes, it was Keith and he told him it was no problem. But when he spoke with Mr. Fox and found out exactly what had to be done, it was not worth the extra money that he was going to have to put in to it for that small 7' x 7' room. What it was, that was made and had a little box into it and what he did was just cut it off and put it with the property line so that it is not over and he still uses that bit of land that was given to him, but it is not buildable and it comes off the back shed of his – and the adjoining owner has no problem with him keeping his (inaudible) out there and such.

Mr. Bevington spoke to Mr. Hopkins and said he got a Building Permit the first time he built something, and then he built something a second time without one.

Mr. Hopkins replied that he did not have the foundation done. When the porch was built already that ... his father was gone and he couldn't ask him again to even comment about it and that was the only reason – he had explained to him, a while back that when you have a porch built on it and after it sits for a year, then you can build on top of it, and he is not sure if it's an old law or not, and his dad has since passed so he has no way to ask him.

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TESTIMONY IN FAVOR: None

TESTIMONY IN OPPOSITION: Mr. Glenn Guenther, 1349 Treaty Court, Hamilton Ohio;

Mr. Guenther said Mr. Hopkins has built this house on the property that is very close to the property line and questions if the property was surveyed by someone other than himself. The fence, we put up on our own property and it's on the back side of this property and looks to him like that it is over the property line and his issue is the devaluation of his property. If this gentleman is allowed to build on the property line, then the next person is allowed to do the same thing, what will happen to his own property.

Mr. Bevington asked Mr. Guenther how close it is to his property line.

Mr. Guenther said it has to be within 12 inches of the fence and he believes the house is overhanging above his property but without a surveying he does not know and wanted to know if it was done by someone other than Mr. Hopkins.

Mr. Fox said no, we do not require surveys for residential work and he would be the responsible party for his site plan because it is on his property – we do not survey property or the capability to do so; and we do not require him to do a survey per Butler County Zoning Regulations.

Ms. Steenken asked what the remedy is if it should be over the property line.

Mr. Fox said let's say Mr. Guenther goes and get a survey of the property and it is over the property line, he would suspect that Mr. Guenther would potentially have to go to court or he could sell Mr. Hopkins a piece of the property and remedy it that way or go through the court system and get the structure removed or that type of thing.

Mr. Fox reminded the Board they can also put a condition on this that he surveys that property line and submits or something.

Mr. Daniel said he does not feel this Board has that authority to (inaudible) and feels it is between the two (2) parties. Mr. Daniel continued to speak however it was inaudible.

Mr. Guenther said, so it would be up to this Board to approve or disapprove the Zoning Variance at this point.

Mr. Fox said the applicant is asking for a variance to build it closer to the rear and side of the property line. If this Board turns it down, the applicant's only option is to tear off the addition. Or, he leaves it up and we have to get him to court and that is not convenient and hopes to avoid that.

Mr. Hopkins said he would like to let the Board know, that before he started building this, he did call all of his neighbors and did go to where Mr. Guenther works and he spoke to his brother, Len or Lenny, and he gave the brother his business card and asked him if he could take the fence down to make it easier for him to get back there and do the work and he asked him if there was any problem to call him. Because of the situation that happened, he went back down there again and took his card to him again and asked if he had any problems to call and he never did call him, so he never knew there was a problem or that this was a situation at all and would have been more than happy to speak to him ahead of time and it would not have even got this far.

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Mr. Hopkins apologized for not going through the proper channels and he did go down to the property and spoke to Mr. Guenther's brother and went down again and spoke to the gentleman in the office there and gave them my card and wanted to let the Board know he wasn't doing it without regard to his neighbors and he does care about everybody and does not want to be un-neighborly.

Mr. Bevington told the applicant that if he really wants to and gets it surveyed and your house in on his property (inaudible).

Mr. Hopkins said he did not actually do the survey to the end of the yard all the way down; Mr. Jim Hobart had it done so he knows exactly where his property line is on the end. That fence line is a good 12 – 15 inches away from that.

Unknown speaker asked how close was the variance applied for from that plot line.

Mr. Fox said it is right on the property line and the variance was for the rear yard setback variance and the side yard setback variance for his addition. He then pointed out which property line he was referring to and said this is the one (pointed to) that we initially approved the variance for initially and then he added on this (pointed to) and here being on the property line.

Mr. Fox asked how far it is from the side property line - like 3 or 4 feet.

Mr. Hopkins said with the addition, the side yard setback is about 1 ½ feet.

Mr. Fox said so it is on the property line in the rear and it is 2 – 2 ½ foot off the side property line.

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said Case BZA11-21V, Dallas Hopkins, Jr., 2321 Thrush Avenue, Fairfield, OH 45014, the request is for a variance to build an addition closer to the rear and side property lines than zoning allows.

Staff Comments are as follows:

1. The property is zoned R-3 Residential.
2. This area is residential 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. The addition will comply with all Residential Building Codes.

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Mr. Salmon made a motion to grant approval of BZA11-21V with the conditions recommended by staff and also recommended the applicant get a professional surveyor to establish the property line prior to any more construction to save him some headaches and to determine that he is doing it correctly.

Mr. Fox asked Mr. Salmon if he is requiring the applicant to submit a survey.

Mr. Salmon replied and said no; he is recommending it, not requiring it.

Mr. Fox said so it is not a condition.

Mr. Salmon said yes, he is just recommending it.

Ms. Steenken seconded the motion and said because it would set a dangerous precedence if this is indeed over the property line, she votes no. Motion denied 3-1.

Mr. Fox told Mr. Hopkins that he can call in the morning to discuss it further.

Mr. Fox said motion was denied 3-1.

AYES: Salmon

NAYES: Steenken, Daniel, Bevington

Mr. Fox told Mr. Hopkins the request has been denied by the Board of Zoning Appeals. He has two (2) options:

Option 1: To take off/remove the addition.

Option 2: To hire an attorney and sue the Board of Zoning Appeals on their decision tonight.

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**ADJOURNMENT:**

Mr. Daniel made a motion to adjourn, which was seconded by Mr. Salmon. 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  
December 20, 2011

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Tom Bevington, Chair

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James M. Fox, Secretary

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Lee Margraf