

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – JANUARY 5, 2009**

CALL TO ORDER

Chairman Gregory Carnes called the Zoning Board of Appeals Meeting to order on January 5, 2009, at 7:30 p.m., at the Tyrone Township Hall.

ROLL CALL

Present: Commissioners Greg Carnes, David Cypher, Debi Smulsky, Claudette Moyski, and Mark Meisel

Other: Tyrone Township Zoning Administrator George Van Hecke

Guests: Donald Roberts

MINUTES OF OCTOBER 6, 2008, ZONING BOARD OF APPEALS MEETING

Cypher moved that the minutes of the October 6, 2008, Zoning Board of Appeals Meeting be approved as presented. (Smulsky seconded). The motion carried.

READING OF THE PUBLIC NOTICE

The Zoning Board of Appeals Recording Secretary read aloud the public notice for tonight's meeting, which was published in the December 21, 2008, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on December 17, 2008, at 9:00 A.M.

VARIANCE REQUEST

- #1 Donald Roberts, RE: Request to Allow a Second Previously Built Detached Accessory Structure to Remain on the Property and a Front Yard Location Variance for this Structure, Located in Front of the Existing House at 6289 Mabley Hill Road, (TAX CODE # 4704-34-402-025)

Donald Roberts requested a variance to allow a second previously built detached accessory structure to remain on the property, and a front yard location variance for this structure. He stated that three ago, he hired a contractor to build a pole barn and the agreement was that the contractor was responsible to take care of all permits and any variances that were needed. He continued that he was unaware that the contractor did not get the necessary permits, until Tyrone Township Zoning Administrator George Van Hecke informed him of the situation. He stated that he lives on a lake and that the accessory building was constructed in the front yard so as not to block the view of the lake. He continued Van Hecke explained that a variance is needed in order to construct an accessory structure in the front yard, even though this is the logical location on lakefront property. He stated he has a detached garage that is approximately 40 feet from the house and the second accessory structure is approximately 600 feet from the house. He continued that because of several streams running through the property and a lot of woods, the accessory structure was located in the current location. He stated any other location would have required the removal of a considerable amount of trees. He continued that he was not aware that you could not have two accessory buildings when he was having the second structure built and that it would be an unreasonable burden to have to tear it down. He stated that the second accessory structure is located where others in the neighborhood are located. He added that his situation is similar to many others in the immediate area.

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COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

In response to Smulsky's question, Mr. Roberts answered that Van Hecke brought the non-conforming situation to his attention. Van Hecke stated that the assessment cards for the area were being reviewed and this is when he noticed the two detached structures. Van Hecke continued they checked the records and found that no permits were issued for the second structure. Van Hecke stated he sent Mr. Roberts a letter informing him that only one accessory structure is allowed, that a variance would be needed for the front yard location and that he would need to come before the Zoning Board of Appeals to apply for the necessary variances. In response to Smulsky's question, Mr. Roberts answered that he has lived there for seven years and that the other properties with two accessory structures on them were built before he moved there. In response to Smulsky's question, Van Hecke answered that he was not sure if the other property owners with two accessory structure had obtained the necessary permits and variances required and that many of them have been there for a long time. Carnes stated that some of the structures were built before the changes in the Zoning Ordinance. In response to Meisel's question, Van Hecke responded that Mr. Roberts came in for permits several years ago for an addition to the house. In response to Carnes' question, Mr. Roberts responded that the accessory structure was built in 2005 and that the addition was built in 2006. Mr. Roberts continued that nothing was said about the second accessory structure when the addition was inspected in 2006. In response to Smulsky's question, Mr. Roberts answered that permits were obtained for the addition to the house. Van Hecke stated the township does not have the occupancy permit from the county on file for this property. In response to Smulsky's question, Van Hecke answered the Ordinance was adopted in 1998. Carnes stated that this situation is a very difficult one. Smulsky stated that no matter what the Board decides, there could be repercussions. She stated if the Board denies the request, others in the area should be denied, and if the Board approves the request, others will possibly come in and want to be allowed two accessory structures on their property. Carnes stated the older structures built before the ordinance changes in 1998 are grandfathered in. Meisel stated that many of the sheds and accessory structures look newer and how does the Board make judgment on one and not the others and not show prejudice. Van Hecke stated the township is trying to tidy up these kinds of situations. Mr. Roberts stated that most of the lake is in Hartland Township. In response to Cypher's question, Mr. Roberts answered that he is on approximately two acres. Meisel used his computer to show the geographic area on the projection screen (the Board took a considerable amount of time to review the immediate area surrounding Mr. Roberts property). Moyski stated she has an issue with the extraordinary circumstances because she is unable to justify it. Meisel agreed. Moyski stated she can understand the substantial justice because the whole area is out of conformance. She continued she can even understand the unreasonable burden, but she can not justify the extraordinary circumstances. Mr. Roberts responded that the extraordinary circumstances would be the inability to locate the second structure in the back yard because of the obstruction of the view of the lake. Moyski stated the extraordinary circumstances would be having two accessory structures when you are only allowed to have one. Meisel stated that the Board should clarify for the record the two issues at hand: 1) having a second accessory structure and 2) the front yard location of the second structure. He continued the clarification would be that in our Zoning Ordinance we have a general standard which says ordinarily, it does not say ordinarily but that is the

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intent, an accessory structure would be located in the rear yard, because it is the natural location to shield it from the neighbors. Meisel stated that on waterfront property you cannot obstruct the views of the water. He continued in these cases an appropriate location for an accessory structure would be to locate it in the front yard or side yard locations. Meisel stated that personally the front yard location is not an issue and that the issue is having two accessory structures on the property. Meisel stated that after listening to the discussion he felt the applicant showed good faith by hiring a contractor, in 2005, who said he/she would pull all required permits, no notice was given of the violation during an addition constructed in late 2006, and the applicant was not aware that the required permits were not pulled or that the structure was in violation of the Zoning Ordinance. Meisel stated the Zoning Board is not suggesting that failure to obtain necessary permits results in a waiver of the need, however the applicant believed the permits were pulled and construction was done in good faith to the best of knowledge of the applicant. In response to Mr. Roberts' question, Smulsky answered that the home owner is responsible to follow up and make sure the permits were pulled. Moyski continued that permits need to be posted at the building site and visible. Meisel stated that a lot of people do not know this. Meisel stated that homeowners can be misled by contractors, who say they will pull the necessary permits and then do not actually pull them. In response to Smulsky's question, Mr. Roberts answered that nothing was said about the second accessory structure when inspections were made on the addition that was added in 2006. Meisel stated that it could be argued that this was not self created because the applicant thought all the permits were pulled at the time this structure was built. Moyski stated that other applicants have had to remove structures because they did not meet the requirements of the Zoning Ordinance and could not meet the criteria needed for granting a variance. Moyski continued that this is a dilemma because there are others in the area that are in the same situation as the applicant. At this time, Meisel spent some time checking the Hartland Township website to see their zoning requirements for this area, but was unable to find a limitation to the number of accessory structures in their ordinances. Cypher stated that the Board cannot go against our Ordinance and should decide this by the Ordinance set forth in front of us. Cypher continued that there are 25 houses between the applicant's property and where Hartland Township jurisdiction begins. Meisel stated he agreed with Cypher but they all share a body of water and generally you apply similar standards for the recreational use of the lake. Cypher stated that even if the lot next door was in Hartland Township the Board should follow our Ordinance and not that of the municipality next to it. Cypher continued that he does not have a problem with the front yard location of the second accessory structure. In response to Smulsky's question, Meisel answered that in all honesty had this come before the Zoning Board of Appeals three years ago, the Board would not have allowed it. Carnes stated that the real problem is why the applicant has to go through this process when there are others out there that have the same scenario – they should have to go through this too. Moyski stated that most of the neighbors in the area have the same problem and that is an extraordinary circumstance. Van Hecke stated that permits were pulled in 2006 for an addition to the house and nothing was said about the second accessory structure at that time, probably because it fit in with the surrounding properties in the area. Meisel stated that when the second accessory structure was built in 2005 the contractor did not pull the necessary permits, but the contractor for the addition to the house pulled all the necessary permits for the addition in 2006. Moyski stated that the

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applicant was not notified about the violation of a second accessory structure when the inspections were done for the addition to the house back in 2006. A lengthy discussion ensued at this time and Meisel was able to compose a motion.

PUBLIC COMMENT

None. Carnes stated he spoke with Stanley and Pauline Bryll and discussed the variance request with them. He continued they never said, one way or the other, if they were for or against the variance request. The Board reviewed written correspondence from Stanley and Pauline Bryll, 6309 Mabley Hill Road, Tax Code # 4704-34-402-026, indicating they are aware of this meeting

MOTION

Meisel moved to grant the variance request of Donald Roberts, located at 6289 Mabley Hill Road, Tax Code: 4704-34-402-025, thereby allowing a second accessory structure on the property as well as a front yard location due to the following findings of fact: Unreasonable Burden: By prohibiting a second accessory structure in this case, the appellant is being singled out when compared to other existing properties with two accessory structures. The ZBA is not condoning the presence or existence of a second accessory structure on the property, which is counter to the objectives sought to be achieved by the Zoning Ordinance. However the current existence of multiple parcels with two accessory structures in the immediate area makes it unreasonable to require only this property be brought into conformance with the Zoning Ordinance. This decision shall not be interpreted as a determination by the ZBA that more than one accessory structure should be permitted in the subject zoning district, that future applications for appeal will be granted, or that construction of more than one accessory structure in the subject district is, or should be, permitted. The intent of the Zoning Ordinance relative to accessory structure location is to preserve water views by providing an unobstructed view to the water. The Zoning Ordinance contains a general provision, which requires a detached accessory structure to be in the rear yard, which contradicts the "sight lines" objective when applied to many waterfront properties. The sight lines objective has precedence in this case, and is best achieved with a front yard location. Substantial Justice: The appellant is benefited by the preservation of the existing accessory structure, as well as the application of this standard consistent with close proximity neighbors. The neighbors and neighborhood are benefited by maintaining a consistent application of the accessory structure standard, thereby eliminating the conflict presented by allowing other existing nonconforming properties in the immediate area which also have two accessory buildings. The location of the second accessory structure is such that trees and proximity minimize the visibility of the structure, and relates harmoniously with the character of the area. Minimum Variance Required: The appellant has requested permission to retain a second accessory structure in its current front yard location. The minimum variance required is to grant approval to retain the existing structure in its current location. Extraordinary Circumstances: The applicant showed good faith by hiring a contractor who said he/she would pull all required permits. No notice was given of a violation during an addition constructed during late 2006, for which all permits were properly pulled. The applicant was not aware a permit was not pulled for the accessory structure, or that his structure was in violation of the Zoning Ordinance. The ZBA is not suggesting the failure to obtain a permit results in a waiver of the need, however the applicant believed a

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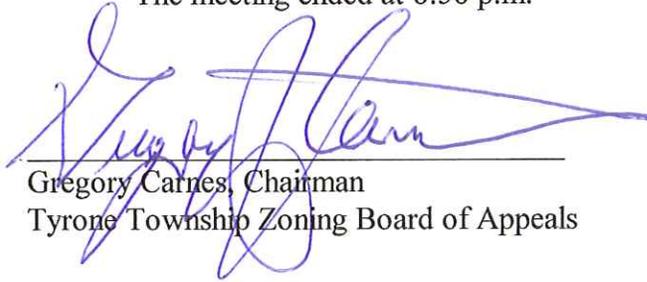
permit was pulled in this case, and the construction was done in good faith to the best of knowledge of the appellant. Consideration of this variance request does not set a precedence, as this situation is believe to be an abnormal, extraordinary circumstance where the appellant believed a permit was pulled, and further the violation was not caught during subsequent construction on the property. Health and Safety: Granting this variance does not adversely impact public safety or create a public nuisance. [Ref. Tyrone Township Zoning Ordinance No. 36 – Section 21.02B (Accessory Structure Provisions – Number and Yard Locations)]. (Moyski seconded.) Roll call vote: Smulsky, yes; Cypher, yes; Moyski, yes; Meisel, yes; Carnes, yes. The motion carried.

MISCELLANEOUS BUSINESS

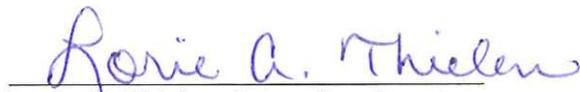
The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, February 2, 2009 at 7:30 p.m.

ADJOURNMENT

The meeting ended at 8:56 p.m.



Gregory Carnes, Chairman
Tyrone Township Zoning Board of Appeals



Lorie A. Thielen, Recording Secretary
Tyrone Township Zoning Board of Appeals

c File

Tyrone Township Clerk
Tyrone Township Zoning Administrator
Tyrone Township Zoning Board of Appeals Commissioners