

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – PAGE 1 – OCTOBER 5, 2009**

CALL TO ORDER

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

ROLL CALL

Present: Commissioners Greg Carnes, David Cypher, Debi Smulsky, Don Bunka, and Mark Meisel

Guests: Debbie and Shannon McLean, James and Betty Denison

MINUTES OF AUGUST 3, 2009, ZONING BOARD OF APPEALS MEETING

Cypher moved that the minutes of the August 3, 2009, Zoning Board of Appeals Meeting be approved as presented. (Bunka 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 September 20, 2009, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on September 17, 2009, at 9:00 A.M.

Commissioner Meisel recued himself from the first variance request because he has a relationship of sorts with the Doolings by virtue of activities with Runyan Lake Inc. which he perceives could be viewed as a conflict of interest, so he will not participate in the decision, but will participate in the discussion at the request of the chairman.

UNFINISHED BUSINESS:

VARIANCE REQUEST

- #1 Dan and Julie Dooling, RE: Request for a variance to be allowed to keep the existing pavilion (that was added approximately a year ago) on the existing deck, behind the existing house, located at 10128 Walnut Shores Drive, (TAX CODE # 4704-09-401-006).

The Doolings were unable to attend the meeting because of a prior commitment with the New York State Army National Guard to counsel soldiers returning from Iraq and Afghanistan who suffer from Post Traumatic Stress Disorder. In a submitted letter to the Board, the Doolings request to be tabled until the next appeal comes before the Board.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

Greg Carnes asked the Board if they reviewed the submitted letter by the Doolings stating that they are unable to attend tonight's meeting. In response to Carnes' question, Meisel answered that the Doolings approached the Planning Commission and the Planning Commission did not feel there was any action they could take or should take at this time. He continued that the applicants have come in to talk to Tyrone Township Zoning Administrator George Van Hecke regarding different options that they may be able to take. Meisel stated that a special land use permit had been discussed. Meisel continued he thinks the Planning Commissions conclusion is that there isn't a need to change the Zoning Ordinance for this situation and that this is what the Zoning Board of Appeals is for. Bunka stated that the Doolings need to bring in any additional information they

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obtained by going to the Planning Commission regarding neighborhood/community use.

PUBLIC COMMENT

None. The Board reviewed written correspondence from: Daniel and Julie Dooling, 10128 Walnut Shores Drive, requesting that their request be tabled.

MOTION

Cypher moved that the request by Dan and Julie Dooling to be allowed to keep the existing pavilion (that was added approximately a year ago), on the existing deck behind the existing house, located at 10128 Walnut Shores Drive, (TAX CODE # 4704-09-401-006), be tabled per the applicant's request until the next appeal comes before the Board. The applicant is to bring in any additional information they obtained by going to the Planning Commission regarding neighborhood/community use. [Ref. Tyrone Township Zoning Ordinance No. 36 – Sections 20.01 (Schedule of Regulations), 20.02Z (Footnote to Schedule of Regulations) and 21.02 (Accessory Structure Provisions)]. (Bunka seconded.) The motion carried by voice vote. Meisel abstained from the vote.

NEW BUSINESS:

VARIANCE REQUEST

- #1 Debbie McLean, RE: Request for a 19-foot east side yard setback variance to finish construction of a 28 by 24-foot addition to an existing 32 by 42-foot barn, located at 13159 Rohn Road, (TAX CODE # 4704-24-300-005).

Debbie McLean requested a 19-foot east side yard setback variance to finish construction of a 28 by 24-foot addition to an existing 32 by 42-foot barn. She stated the barn is over 100 years old and right now it does not conform to the current setback regulations. She continued that the southeast corner of the barn is 4 feet from the property line and the northeast corner is 2 feet from the property line. She stated that in the spring she had the barn restored, starting with the foundation being repaired, new doors and new windows. She continued that when considering the addition to the barn, she knew the Denison's had concerns so she went to talk to them. She continued that Mr. Denison was not there, but she spoke to Mrs. Denison about what she planned to do to the barn and if Mr. Denison had any questions or concerns she would be willing to discuss it with him. She stated that several weeks went by and she never heard anything and she thought everything was ok. She stated she went off of her original mortgage survey which showed that the property line was 14-feet 7-inches away from the barn. She continued that construction began without a permit and that she did not know a permit was necessary for an addition. She added that a permit was not needed for the restoration and this was the first time she had done any improvements on her own. She stated she received a letter from her neighbor stating she needed to cease construction because he felt she was building on his property. She continued that this led her to the Township to get a permit and found out that there was a discrepancy with the property line. She stated she hired Tri-County surveyors to do a new survey of the property and they came up with the barn being 2 feet off the property line at the back northeast corner. She continued that when the addition is completed the closest point of the barn would be 1 foot from the property line. She added that the purpose of the addition was to give her unobstructed space in the barn for agility training with her dog. She added that due to the interior layout of the barn

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and the bearing walls, the addition could not be built anywhere else on the property. She stated the addition does not interfere with the view for the neighbor and it is not a fire or safety hazard. She continued the addition is 90% complete and she would not need to access the neighbor's property to complete the addition.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

Meisel stated that in FR the front yard setback is 150 feet, the back yard setback is 75 feet and the side yard setback is 30 feet. After a lengthy discussion, the Board determined that side yard setback for an accessory structure is 20 feet and not 30 feet. Carnes stated that the Zoning Ordinance requirements can be found online at the Township's website and are available for all the residents to review. Carnes stated the existing barn is 4 feet from the property line on the southeast corner, making it 16 feet nonconforming. He continued it is built on an angle to the property line and the northeast or back corner is 2 feet from the property line, making it 18 feet nonconforming. In response to Cypher's question, Ms. McLean answered that the mortgage document showed the barn at 14 feet 7 inches from the property line. Meisel stated that this would be a significant error. Ms. McLean stated that there is a stone foundation that goes off to the side of the barn and if you measure from the barn out to that, the 4 feet and the 2 feet measurements are off of that stone foundation. In response to Bunka's question, Ms. McLean answered that she thought the mortgage drawing was proper, but she paid for another survey and it showed that it wasn't proper. In response to Smulsky's question, Ms. McLean answered that the survey was a certified survey done this year. Meisel stated that what is required is an actual stake or certified survey. Ms. McLean stated this was a staked/certified survey because they found the actual irons. Meisel stated that a staked/certified survey could be argued or enforced in court. At this time, James and Betty Denison, 13151 Rohn Road, submitted a survey they had done July 15, 1989 by Richard L. Smith showing the concrete that Ms. McLean spoke of and the boundary that goes where the concrete was. Meisel stated that according to the survey by Richard L. Smith they were able to find five existing irons. Mr. Denison stated that according to Township regulations he had to have a minimum of 200 feet of road frontage on Rohn Road in order for him to build back there and he actually has 210 feet of road frontage. He continued he had his driveway put in 15 feet from the property line. In response to Carnes' question, Ms. McLean answered that she has owned the property for 21 years. Cypher stated that the two surveys do not line up, one shows 2.2 feet and the other shows 2.87 feet. Carnes stated we have 1989 technology verse 2009 technology for the surveys and there have been vast improvements in the last 20 years as to how surveys are done. In response to Cypher's question, Mr. Denison answered that the drawing does not show his driveway. He continued his driveway is 15 feet from the existing barn on the west side of the property and the northeast boundary is over 210 feet from the McLean property. Carnes stated the Denison driveway is 19 feet from the original existing barn and 16 feet to the new addition on the barn. In response to Bunka's question, Ms. Denison answered that the driveway runs very near to the edge of the concrete foundation. Mr. Denison stated that the foundation was part of the milking barn that was there.

PUBLIC COMMENT

Betty Denison, 13151 Rohn Road, stated objection to the granting of the McLean

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variance request. Mr. Denison stated he told Ms. McLean where the property line was at. He added that Ms. McLean would have to trespass on his property in order to finish the addition to the barn. He stated Ms. McLean constructed the addition when he was out of town for two weeks. Mr. Denison continued that he does not want the barn 1 foot from his property line. He stated a concern with have problems trying to sell the property in the future, due to the barn being so close to the property line.

The Board reviewed written correspondence from: James and Betty Denison, 13151 Rohn Road, stating objection to the granting of the McLean variance request.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

In response to the above comments by Mr. Denison, Ms. McLean responded that the addition to the barn is almost 90% complete and they would not have to go onto Mr. Denison's property to finish the addition. She continued it was not true that that Mr. Denison was out of town for two weeks because as soon as the addition started going up it would have been completed in two weeks. She added that Mr. Denison immediately came up to the Township to talk to Tyrone Township Zoning Administrator George Van Hecke and this is when she found out that she needed a permit for the addition to the barn. Ms. McLean added that Mr. Denison and her builder, Mr. Elkin, had a discussion about this when this all came to light and it was stated by Mr. Denison that if Ms. McLean could prove the barn addition was not on his property he would not object to the addition in that location and this conversation was sealed with a customary handshake. She continued that this is why the builder thought it was ok to continue with the barn addition. Mr. Denison stated he told Mr. Elkin that he needed to talk to his wife about this because her name is on the deed, so they discussed it and decided against it. At this time, Chairman Carnes stated that we do not need to get into an argument between neighbors and we need to stick to the facts, not hearsay. Ms. McLean stated it is now clear as to where the property line is and she agrees that the barn is close to his property line. She added Mr. Denison was correct and her mortgage survey was wrong. Ms. McLean stated that both parties agree where the property line actually is located. Meisel stated the barn is at an angle relative to the property line and it kind of violates the old standing rule of not increasing the amount of nonconformance relative to distance verse length. He continued the law of unintended consequences came into play here when one piece of documentation that was relied upon turned out to be inaccurate, which is always unfortunate. Meisel wondered if a building permit had been obtained, what documentation would have been required to be provided for the addition to the barn and if that would have caught this. In response to Smulsky's question, Cypher answered that the permits would have been pulled at the Livingston County Building Department and they would have gone by whatever the submitted plans had shown. Meisel added that it would be considered a reasonable document. Carnes stated the Denison's have a staked survey by Richard L. Smith that is pretty accurate. Meisel stated that Ms. McLean's mortgage certificate/report was not accurate and does not require the finding of the corner irons. Cypher stated the only access for the 37 acres is onto Rohn Road and with a primary residence back on the 37 acres they would never be able to break off the 210 foot road frontage or be able to build a home there. He continued there is not a requirement for the parcel of property to have 210 feet unless they build a house on it, but there is a requirement to have a 66 foot wide easement to the back parcel of property. Meisel agreed and stated the fact that there would have to be a 66 foot wide easement to gain access to any split off the parcel would mean that you couldn't build in

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the area to the immediate east because it would encroach into the 200 foot front yard setback. Cypher stated you would have to take 66 feet from the 210 feet and you would not have a sellable lot based upon road frontage. Cypher continued the 210 feet would forever be the driveway or road access. He continued if someone bought this 37 acres they could split it into 4 parcels of almost 10 acres each, but they would never be able to built on the 210 feet and it would always be open vacant land under the current terms of the Zoning Ordinance. Meisel stated that he agreed with Cypher on the context. He continued that if the Zoning Ordinance were to change in the future the situation could possibly change. Cypher stated that nobody would be able to build on the 210 foot wide area as long as there is a residence off of that driveway and Meisel stated he shared Cypher's opinion. Ms. Denison stated that a developer could buy the property and put in a private road in the same spot and the 210 feet could be the road frontage looking at the barn and they would have the road frontage needed because they would be on another road. Meisel responded that the same 66 foot wide easement would apply. Cypher stated you would have to take 66 feet from the 210 feet and be left with 144 feet which is not deep enough for a lot under the current Zoning Ordinance. He continued that the biggest thing he looks at is health and safety issues. Carnes stated a road could be run 1½ feet from the barn. Cypher stated the applicant has increased the nonconformity of the existing barn. He continued that the original barn was 1344 square feet and the addition is 672 square feet. Carnes stated the nonconformity was increased by 3 feet. Cypher stated there is no possibility of creating a safety issue for the adjoining property owners, fire trucks and ambulances would still have to access down the driveway should the house in the back be on fire. He continued if the barn were to catch on fire and burn down it would not be a threat to the adjacent property structures. Cypher stated that the Board has dealt with these errors of people not understanding that they must pull permits and Ms. McLean is not the first to come before this Board. Carnes stated that the Board has made people move barns in the past. Cypher stated if this were a brand new build, he would personally have different feelings about this as to an older existing barn. Cypher continued that if a new 2000 square foot barn had been built 2 feet off of the property line, without permits, then he would have a problem with this. He continued that in this particular case the existing barn gets to stay by rule and we can't change it. Cypher stated that what they are dealing with, in his opinion, is an addition to an existing barn that encroaches 2 feet further. He continued that there is not a size limit and a 672 square foot addition to a 1,344 square foot existing barn did not double the size of it. Carnes stated that due to the interior layout of the barn and the bearing walls, the addition could not be built anywhere else on the property, according to the applicant. Meisel stated an issue that does not diminish the challenge that is here is that the mortgage certificate, whether it was accurate or not, with the 20 foot side yard setback requirement it was nonconforming either way, so it is 2 foot more nonconforming regardless of where it originally was relative to the property line. Smulsky stated she always has an issue with approving things that did not go through the proper channels and we are now dealing with an existing structure. She continued this might not be before this Board had proper channels been followed. Cypher stated if the proper channels had be followed and this still had to come before the Board, it would have been easier for the Board to stipulate that the addition not encroach any further into the setback, so the barn would have had an offset in it, but it would not encroach further into the setback instead of increasing it to what we now have. He continued we are taking a nonconforming structure and making it more nonconforming.

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Carnes stated the Board has 5 criteria it must answer to in order to grant a variance. Cypher stated a motion in favor of the request has to totally be based around the older existing barn and the original mortgage certification. Meisel stated the original foundation was used for the restoration of the original portion of the barn. Meisel stated this is a 100 year old barn that has some historical value there. Cypher stated there are no health or safety issues and he cannot see a structure on any adjoining properties that can be within at least 200 feet of this barn. Carnes stated that we need a motion on this variance request. The Board collectively discussed the 5 criteria, at length, in order to come up with a motion on this variance request. In response to Cypher's question, ZBA Recording Secretary, Lorie Thielen answered that 9 neighbors were notified about this variance request, which includes everyone within 300 feet of the perimeter of the McLean property. Cypher stated that out of nine neighbors being notified about the variance request only one neighbor has responded. Meisel stated there are two arguments here, one being that the applicant did not think they were encroaching into an un-encroach able area and once they did that you have to look at the adverse impact. He continued it is the cart before the horse, its back to maybe there is some allowance as a result of the fact that there was an unintentional modification and now that it exists the question is how much weight to we place on the inaccurate mortgage certificate? Cypher stated that he does not believe in an FR district you have to get a permit for accessory structures. He continued you don't it doesn't have any bearing on this at all. Meisel responded that he does not know. In response to Smulsky's question, Cypher stated the applicant needs a land use permit issued by Zoning Administrator Van Hecke. Bunka stated he is hung up on the permit issue and applicants circumventing the permit requirements, whether it is township permits or county permits. Meisel stated what is done is done and the Board needs to look at if it was done with intent and malice. He continued even if you think it was done with intent and malice, what is the corrective action that will reasonably benefit the township and the residents? Meisel stated the challenge is would it be reasonable to tear this barn down and rebuild it, would it provide substantial justice to the adjacent neighbor, anybody else, or to the township. Cypher stated with the existing barn there the original footprint does not have to be altered. Cypher continued if this were a new 2000 square foot barn built 1½ feet off of the property line, without permits, then he would have a real problem with this. Smulsky agreed with Cypher's statement. Cypher stated this is an existing barn which was built in the 1800's on 80 acres which obviously had no setback issues or problems. He continued the property split was right through an old barn, which obviously had been modified before the land split. Cypher stated the Planning Commission could not allow a split today that would put the existing barn 1½ feet from the property line; they would have to move the property line 20 feet to the east in order to make this split today to meet the 20 foot side yard setback. Bunka stated the Board has had to deal with structures that have already been built and it is not fair to the adjacent property owners. He continued that in the past the Board has adhered to not increasing the nonconformity, but have allowed the line to continue whatever it was. Bunka stated in the past the Board has told ourselves that this would not happen again if this other person were to do something similar to this. Meisel stated this gets back to willful or intentional on the part of the applicant, which he does not think happened in this case. Smulsky stated the Denison's came in with valid arguments and they are almost not getting their due diligence. Carnes stated the Denison's concern was being able to split the property and put lots to the north side of the drive and they cannot regardless.

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MOTION

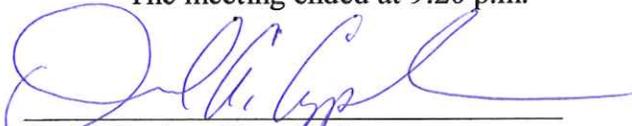
Meisel moved to grant the variance request of Debbie McLean, located at 13159 Rohn Road, Tax Code #4704-24-300-005, for a 19 foot east side yard setback variance to finish construction of a 28 by 24 foot addition to an existing 32 by 42 foot existing barn, for the following findings of fact: Unreasonable Burden: The appellant utilized a June 13, 1988 mortgage certificate, which shows 14.7 feet of existing side yard setback. The prior zoning ordinance side yard setback requirement for the FR district was 10 feet, so it was not unreasonable for the appellant to believe this dimensional requirement still existed. The addition utilizes the existing load bearing walls from the 100+ year old original barn. Substantial Justice: The adjacent neighbor, while objecting to the appellant's request, is arguably not adversely impacted by this variance request because of the required 66 foot private driveway easement and the 200 foot lot width requirement. None of the remaining 8 neighbors objected to the request. Minimum Variance Required: The appellant has requested permission to retain the existing structure as modified. This represents the minimum variance required. Extraordinary Circumstances: The appellant utilized a June 13, 1988 mortgage certificate, which shows 14.7 feet of existing side yard setback. The prior zoning ordinance side yard setback requirement for the FR district was 10 feet, so it was not unreasonable for the appellant to believe this dimensional requirement still existed, which would have complied with the Ordinance. The addition utilizes the existing load bearing walls from the 100+ year old original barn. Health and Safety: Granting this variance does not adversely impact public safety or create a public nuisance, inclusive of runoff, due to the location and pitch of the roof addition. [Ref. Tyrone Township Zoning Ordinance No. 36 – Section 20.01 (Schedule of Regulations)]. (Cypher seconded.) Roll call vote: Meisel, yes; Smulsky, yes; Cypher, yes; Bunka, no; Carnes, no. The motion carried.

MISCELLANEOUS BUSINESS

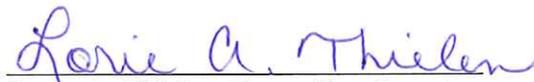
The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, November 2, 2009 at 7:30 p.m.

ADJOURNMENT

The meeting ended at 9:20 p.m.



David Cypher, Vice-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