

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – PAGE 1 – SEPTEMBER 13, 2010**

CALL TO ORDER

Chairman Gregory Carnes called the Zoning Board of Appeals Meeting to order on September 13, 2010, at 7:30 p.m., at the Tyrone Township Hall.

ROLL CALL

Present: Commissioners Greg Carnes, David Cypher, Debi Smulsky, Dave Wardin, and Mark Meisel

Guests: Gary Minaudo, Mike Morrison, Chapin Cook, Richard Stokes, and Steve Rollier

MINUTES OF JUNE 7, 2010, ZONING BOARD OF APPEALS MEETING

Cypher moved that the minutes of the June 7, 2010, Zoning Board of Appeals Meeting be approved as presented. (Meisel 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 August 29, 2010, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on August 20, 2010, at 9:00 A.M.

VARIANCE REQUEST

- #1 Richard Stokes, RE: Request for a 400 Square Foot Size Variance in Order to Build a Proposed 30 by 40-Foot Detached Accessory Structure and a Variance to Locate the Proposed Structure 10 Feet into the Open Space Area, Behind the Existing House, Located at 10090 Bennett Lake Road, (TAX CODE # 4704-04-100-045)

Steve Rollier, representing property owner Richard Stokes, requested a 400 square foot size variance in order to build a proposed 30 by 40-foot detached accessory structure and a variance to locate the proposed structure 10 feet into the open space area, behind the existing house. He stated that the property drops off and they are planning on locating the barn so Mr. Stokes can access it by extending the existing driveway. He continued that access to the structure will be at the same level as the existing driveway. He stated the proposed location of the structure encroaches into the open space since they cannot locate it on the lower level because they would have to change the entire driveway. He continued that they want a variance to encroach into the open space or a variance to relocate the open space on the property. He stated there is only one neighbor, Heather Behrens, 9569 Longmeadow Street, that can actually see the property and she submitted a letter in favor of the variance request by Mr. Stokes. Mr. Rollier continued that they pushed back the location for the proposed barn 20 feet into the open space, not 10 feet, because in the summer Mr. Stokes plans to keep his camper next to the barn and it was hard to maneuver around the house to get to the proposed barn because of the way the grade is. He continued that in the winter the camper will be stored in the proposed barn. He stated the proposed barn would no longer be 15 feet off the back corner of the house. He continued they are asking to relocate the open space for placement of the proposed structure and a size variance of the proposed structure.

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COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

Carnes stated that the Board has never had a request to build into the open space. In response to Mr. Rollier's question, Meisel responded that the open space could possibly be relocated but the request would need to go before the Planning Commission. Carnes stated the Planning Commission would send their recommendation to the Township Board once they make a decision on it. Carnes stated he does not believe the Zoning Board of Appeals has the ability to grant a variance into open space. Meisel stated he contacted Sally Hodges, the Township Planner, who verified the open space relocation would be a Planning Commission issue. Meisel stated that in the applicants request there is nothing mentioned about modifying or relocating the open space. Carnes stated the applicant would need to go to the Planning Commission to relocate the open space and then come back to the Zoning Board of Appeals for the other variance consideration. Meisel suggested to the Chairman that the Board carry forward and if the Board considers granting a variance, they could grant it conditional upon a favorable relocation of the open space by the Planning Commission. Meisel continued the Board should address the size variance because if the size variance is not granted there would be no need for the applicant to go to the Planning Commission to relocate the open space. Meisel stated that he does not believe the Planning Commission would allow the applicant to build into the open space. Meisel stated it is of his opinion, as a member of the Planning Commission, that there is not a hardship situation that would give the applicant a credible reason to abandon some of the open space that was allocated. Cypher stated the applicant would not need a variance if they were to build an 800 square foot structure. Mr. Stokes stated he would like to get a 400 square foot size variance. He continued if they pull the proposed structure out of the open space it would look like an eyesore and they want to make it aesthetically pleasing. Mr. Rollier stated the structure would appear to be attached to the house. Cypher stated there are places on the property in which to relocate the open space. Mr. Rollier stated they want to make it work, whatever way possible, so he would like to request the size variance only, with the condition they go to the Planning Commission to relocate the open space. At this time, Meisel gave a lengthy explanation about how open space was created and the reasons behind the open space requirement. Cypher stated a new legal description for the property would have to be written if the open space is relocated and there would be an expense for that. Meisel stated a surveyor would be needed that would create a new drawing and legal description. Smulsky questioned what the height of the building site would be on the east side of the proposed structure, since there is a gradual incline from the west side to the east side of the property. Mr. Rollier answered that the excavators will come in and take the grade all the way down on the top of the hill, where it is all staked out, to the driveway level and there will not be an incline to the proposed structure. In response to Meisel's question, Mr. Rollier stated he does not have the building height yet. Meisel stated the height of the structure is limited to 15 feet in height, not to the peak but a roofline average. (Reference: Zoning Ordinance No. 36 - Article 2 - Definitions – Building Height). Carnes stated the Board would consider the 400 square foot variance request, but the applicant must meet 5 criteria for a variance request to be granted. Carnes continued the applicant does not appear to meet the criteria for Unreasonable Burden. Mr. Stokes responded that the structure is not visible from the road or by the neighbors. Meisel stated these would meet the criteria for Substantial Justice. Carnes and Meisel both stated the Extraordinary Circumstance would be the topography issues of the property. Cypher stated the Board is not debating the location of

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the structure but the size of the proposed structure. He then questioned how the topography of the property has anything to do with the size of the structure. In response to Meisel's question of the structure being reduced to 800 square feet in size and if the topography would play into it, Cypher answered that the applicant would not be here if the structure were reduced to 800 square feet. Cypher stated the applicant is here because the proposed structure is 1200 square feet and he does not see how the topography of the property is justification to allow the applicant to build a larger structure. Meisel stated the real issue is that the applicant is taking things that he is storing outside and would store them inside, which is a benefit to health, safety and welfare. He continued it would be an aesthetic benefit and harmonious with the surrounding area. Cypher stated the Board runs the risk that if they grant him a 1200 square foot structure a neighbor could come in for a 1200 square foot structure and so on. He continued it would be easier to grant a variance for size if it were on a 10 acre parcel. Mr. Stokes replied that he could build a 5000 square foot structure and neither neighbor would see it and it would not be seen from the road. Carnes stated that this is not the first time this has been a problem and that the Board has asked the Planning Commission to review this section of the Ordinance. Mr. Stokes stated a 20 by 40-foot structure will look like a tunnel. Meisel stated the size that was established a number of years ago was much more consistent with the size of structures people were building. He continued if you go to any lumberyard now and pick out a standard structure you are looking at 824 or 900 square feet. He stated the practical use of something in that size configuration gets to be a little challenging as well. Meisel stated he does not know if the Planning Commission is going to change the requirements that currently exist, but they are up for consideration. Meisel continued the request before the Board tonight is for a 400 square foot variance from the 800 square foot size requirement and the applicant must meet the 5 criteria in which to grant the variance request. Carnes stated there is a statutory set of requirements that must be met in order to grant a variance. Meisel stated the statutory set of requirements and the applicant must meet all 5 criteria in order for the Board to grant the variance. Carnes stated it would be nice to know the size of the structure on the neighboring property. Cypher stated that the Health and Safety is the only requirement that is cut and dry and he cannot put a reason on any of them. Meisel stated he can work on Substantial Justice just by virtue of the fact that it cleans up the yard, safety of property, the aesthetics of the neighborhood and a written letter in support of the variance request. Meisel stated he feels the applicant meets Substantial Justice; the Health, Safety and Welfare; the minimum variance required; but as far as the purpose the applicant intends to use it for is the size necessary to house his possessions, which will clean things up. The Boards challenge is the two that effectively establish the need over and above "I want it" and a mere inconvenience and that is the Extraordinary Circumstance and Unreasonable Burden criteria. Cypher stated he thinks the Board would be stretching the minimum variance required because this is the size the applicant would like to have. Cypher stated an 800 foot structure could be built without the need for a variance. In response to Mr. Rollier's question, Cypher stated that for the Board an 800 square foot structure is acceptable according to the Zoning Ordinance. He continued the Board must answer the same 5 criteria no matter if the structure is 1 foot or 400 feet over the 800 foot maximum size allowed. Mr. Rollier stated he does not know if they would proceed to the Planning Commission to relocate the open space if they do not get the 400 square foot size variance. In response to Mr. Rollier's question, Cypher answered that the Planning Commission is the Board that determined the accessory structure maximum size

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and that the Ordinance is written as a broad overcast of the whole township and that the township is set up into different districts. Mr. Rollier stated they would not have spent \$400 to come in for a variance if they had known 800 was the maximum size. Meisel stated the applicant is faced with two challenges here: 1) a Planning Commission that has, with agreement of the Township Board, adopted a Zoning Ordinance that says here are the requirements that exist for various zoning districts throughout the Township. He continued that right, wrong or indifferent they chose 800 square feet for an accessory structure in R-1 and the only way that will change is if the Planning Commission agrees to attempt to amend the Zoning Ordinance and the Township Board then approves that amendment. Meisel stated that the Planning Commission does intend within the next couple of months to take into consideration a potential change to the size of accessory structures. 2) Meisel continued that the only way the applicant can attack the problem, if they choose to do so, is to come before the Zoning Board of Appeals, it is the applicant's only option. Meisel added the applicant requested a 400 square foot size variance and the ZBA's job is to establish the criteria that are necessary both under the Zoning Ordinance and under the State Statute to allow the applicant to do that. Meisel stated that the Board runs into a few cases each year where the best intentions cannot be responded to by the granting of a variance because the Board cannot meet the legal requirements for granting a variance and that is where the Board is stuck. He continued the applicant has something that he thinks the entire Board would probably agree is a good thing to do, it cleans some things up, and the Board members may not have a problem with this but they do not have a tool in which to help the applicant out. Mr. Stokes stated his mother-in-law, who is handicapped, will be moving in with them and that is why he needs additional space in the garage for storage. Meisel responded that is a good reason but it would fall into the mere inconvenience category and the applicant would need to convince the Board that the modifications he is going to make are going to provide handicap accessibility or something like that. Meisel stated that the Board needs to come up with Extraordinary Circumstance and Unreasonable Burden to grant this variance request. In response to Mr. Rollier's question, Carnes answered that the applicant needs the Planning Commission to amend the Zoning Ordinance. Meisel stated that to change the Zoning Ordinance is a 9 month process. He continued the only other avenue the applicant has is that if the Zoning Board denies the variance request any decision can be appealed to the circuit court, but you will be stuck with the circuit court with the exact same criteria that is here and they will ask the exact same questions in regard to Extraordinary Circumstance and Unreasonable Burden and this unfortunately will play out again at a greater expense in his view. Cypher stated the only reason to table this request would be to see if the Planning Commission would consider moving the open space. Smulsky stated the applicant would incur an additional fee if he came back before this Board. Meisel responded the applicant could petition the supervisor to have the fee waived to come back to the Zoning Board of Appeals. Meisel stated this is on the list of things to review on the Planning Commission and it was discussed with the Township Board at the last meeting, but it might not be discussed for several months. He continued once discussed it would need to be changed which can take up to 9 months. At this time the Board looked at the Zoning map of the Township and discussed the different zoning areas (R1, RE, etc.) around the applicant's location. Meisel stated that the Planning Commission cannot spot rezone. Cypher stated it would be hard to increase the size for accessory structures in R1 because of the denseness of most of the R1. Meisel stated they dealt with this by adopting new ordinance

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sections which include some discretionary ability in a lot of these requirements. Smulsky stated there is no way to address the two issues at hand. At this time, Carnes asked for the Board to come up with a motion.

PUBLIC COMMENT

None. The Board reviewed a letter from Heather Behrens, 9569 Longmeadow Street, stating support for the variance requests by Mr. Stokes.

MOTION

Meisel regrettably moved to deny the request by Richard Stokes for a 400 square foot size variance in order to build a proposed 30 by 40-foot detached accessory structure behind the existing house, located at 10090 Bennett Lake Road, (TAX CODE # 4704-04-100-045), because the required criteria for Extraordinary Circumstance and Unreasonable Burden could not be established. [Ref. Tyrone Township Zoning Ordinance No. 36 – Sections 20.01 (Schedule of Regulations)]. (Wardin seconded.) Roll call vote: Wardin, yes; Carnes, yes; Meisel, yes; Smulsky, yes; Cypher, yes. The motion carried.

VARIANCE REQUEST

- #2 Gary T. Minaudo, RE: Request for an 18-Foot Front Yard Setback Variance and a 3-Foot West Side Yard Setback Variance in Order to Build a New Proposed 22½ by 28-Foot Attached Garage Onto the Existing House, Located at 10425 Spring Street, (TAX CODE # 4704-09-204-031)

Gary Minaudo requested an 18-foot front yard setback variance and a 3-foot west side yard setback variance in order to build a new proposed 22½ by 28-foot attached garage onto the existing house. He stated the proposed attached garage would come out 3 feet from the side of the house, which would be 7 feet from the property line and 26 feet from the house next door. He continued he would come out 28 feet and 22½ feet across. Mr. Minaudo stated the road easement is 21 feet, which is half of the 42 feet and they need to be 35 feet from that and will only be 17 feet away, thus needing an 18 foot front yard setback variance. He added he has a little well house with the pump and freshwater tank in it, with a little room for storage. He stated he has little storage room in the house and needs a garage to put his car in and to store other possessions. Mike Morris, contractor for Mr. Minaudo, stated the Unreasonable Burden would be one of the permitted land uses is the ability to have a house and a garage and having a garage is not an unreasonable request. He continued the majority of the neighbors have garages on their properties. He stated the setback requirements were probably different at the time they were built because the majority of them are closer to the road than Mr. Minaudo will be if the Board allows him to have the variance requested. He continued the proposed structure will be a substantial distance to the road. Mr. Morris stated the Unreasonable Burden is not permitting you to use any and all permitted uses of the land and one of the permitted uses of the land would be to have a house and a garage and the applicant is being burdened by not being able to have a garage because of the setback requirements and where all of his neighbors that have existing garages fell under different criteria to allow them to have a garage. He continued because the criteria changed the applicant cannot have a garage. He added the garage would not be an eyesore for the neighborhood. He stated that an

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attached garage is a reasonable request. Mr. Morris continued that there are no Safety or Health issues.

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In response to Cypher's question, recording secretary, Lorie Thielen, answered that the request was given to the Livingston County Drain Commission for review. Meisel responded that with this proposal the access that exists today for the well and septic tank doesn't effectively change. Meisel stated there is a practical complication here, we have a long standing tradition that when the Board grants a variance the applicant still needs to go forward with all the other agencies and approvals. He continued the difficulty is that Steve Hasbrouck, being a member of the LCDC, has tried to take it upon himself to try to look at the requests and try to help, which is ok, but the Board really does not have any requirements that we need advance approval from the LCDC. He stated that this Board has tried to look out for these types of situations where there might be an access issue and has told applicants that they need to get approval from the Health Department or the LCDC to proceed. Meisel continued that the proposed placement of the garage is not going to change the access at all. Cypher stated he does not have a measurement from the front corner of the deck to the property line on the lake side. Cypher questioned if the proposed structure would be encroaching any closer. Mr. Morris answered that the proposed structure would not encroach closer than the front corner of the deck but it would be almost the same. Cypher stated that there is some nonconformity with almost all the houses out there and the Board tries to not increase the nonconformity. He continued it is easier for the Board if the nonconformity does not increase beyond what already exists. Cypher stated he personally does not have a problem with the distance between the proposed structure and the road. He continued there are approximately 26 feet between the corner of the garage and the neighboring house to the west, so the normal concerns for firefighting and accessibility are met. He added there are no big trees blocking the area and there are a lot of pluses with the garage and the proposed location. Cypher stated that the proposed garage will be far enough off the road to still have a minimum of a car or two nose to tail without being out in the street so he is not taking away any of his off-street parking and will not hinder passageway on the road. He continued the applicant is only asking for a 22½-foot wide garage, which you do not see many 22½-foot wide garages, and he appreciates that the applicant did not come in and ask for a 24-foot wide garage which is a reasonable request and is definitely asking for the minimum. Mr. Morris stated that the existing pad in front of the house will stay exactly the same and the garage would not encroach into it at all and would be about 6 to 7 feet away from the pad. He continued the off street parking would not change. Wardin stated there is a 5 to 6 foot gap between the proposed garage and the porch. Mr. Minaudo responded that there is a window there which goes into the kitchen and they do not want to lose the view out the window. Cypher stated the well is located there and to move the proposed structure back, it might restrict access to the well and grinder. He continued the proposed location of the garage would be ok as long as it does not encroach any closer than what already exists. Meisel stated the proposed garage size is ok in relation to the size of the house. In response to Cypher's question, Meisel answered that lots 29 and 30 were combined. Meisel stated that the lots that are established were platted and the lot sizes were established long before the creation of the existing Zoning Ordinance, which would relate to Unreasonable Burden because it was clearly not a self-created situation. He continued this is zoned single family detached

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residential and there are certain features that you expect that you should be able to build and are permitted to build under those circumstances and the only limitation you have are the platted lot sizes. Carnes stated for the record that he and Meisel discussed a possible conflict of interest and determined that there was none. Meisel stated he does not have a personal relationship with the applicant and the lake and neighborhood associations took no position for or against the request.

PUBLIC COMMENT

Chapin Cook, 10429 Spring Street, stated support for the granting of the variance request by Mr. Minaudo. No written correspondence was received prior to tonight's meeting.

MOTION

Smulsky moved to grant the request by Gary T. Minaudo for an 18-foot front yard setback variance and a 3-foot west side yard setback variance in order to build a new 22½ by 28-foot attached garage onto the existing house, located at 10425 Spring Street, (TAX CODE # 4704-09-204-031), based on the following: **Unreasonable Burden:** The applicant is unreasonably burdened by the Zoning Ordinance requirements because it does not allow him to use his property for both a house and a garage, which are reasonably permitted uses of the land. Most of the adjacent neighbors have both a house and a garage on their property. The plat of Runyan Lake Point was established prior to the existence of the current Zoning Ordinance and as a result many platted lots, including the subject lot, are unreasonably burdened given the constraints that are set forth for lot dimensions under the current Zoning Ordinance. **Substantial Justice:** Granting this variance will provide the applicant with the same land use that all existing neighbors have. This will not change or alter any of the neighbors land uses. The garage will blend in with the rest of the neighborhood. **Minimum Variance Required:** The applicant is requesting an 18-foot front yard setback variance and a 3-foot west side yard setback variance because it will allow him to have a house and a standard garage like the rest of his common neighbors. **Extraordinary Circumstances:** Many of the homes in the surrounding area of the applicant's house have garages that do not meet the current Zoning Ordinance requirements. The plat of Runyan Lake Point was established prior to the current Zoning Ordinance. **Health and Safety:** A garage on the property will in no way cause any health and safety issues or traffic problems because the granted variance allows a garage that will still be 17 feet from the road easement. [Ref. Tyrone Township Zoning Ordinance No. 36 – Section 20.01(Schedule of Regulations)]. (Cypher seconded.) Roll call vote: Carnes, yes; Smulsky, yes; Wardin, yes; Cypher, yes; Meisel, yes. The motion carried.

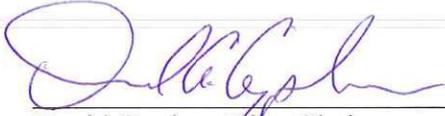
MISCELLANEOUS BUSINESS

The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, October 4, 2010 at 7:30 p.m.

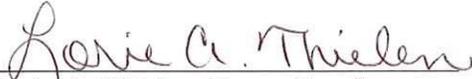
ADJOURNMENT

The meeting ended at 9:21p.m.

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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