

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING  
APPROVED MINUTES – PAGE 1 – OCTOBER 4, 2010**

**CALL TO ORDER**

Vice-Chairman David Cypher called the Zoning Board of Appeals Meeting to order on October 4, 2010, at 7:30 p.m., at the Tyrone Township Hall.

**ROLL CALL**

Present: Commissioners David Cypher, Débi Smulsky, Dave Wardin, Mark Meisel, and Laird Landis

Guests: Louis Fage, Christian and Jennifer Sage

**MINUTES OF SEPT. 13, 2010, ZONING BOARD OF APPEALS MEETING**

Smulsky moved that the minutes of the September 13, 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 September 19, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on September 16, 2010, at 9:00 A.M.

**VARIANCE REQUEST**

- #1 Louis Fage, RE: Request for the Following Three Variance Requests: 1) a 400 Square Foot Size Variance in Order to Build a proposed 30 by 40-Foot Detached Accessory Structure; 2) a Front Yard Location Variance in Order to Build the Proposed Structure in Front of the Existing House and Existing Garage; and 3) a Variance to Keep the Existing 21 by 24-Foot Detached Garage, Located at 10123 Carmer Road, (TAX CODE # 4704-10-300-034)

Louis Fage requested a 400 square foot size variance in order to build a proposed 30 by 40-foot detached accessory structure; a front yard location variance in order to build the proposed structure in front of the existing house and existing garage; and a variance to keep the existing 21 by 24-foot detached garage. He stated the proposed structure is 324 feet from the road. He continued the existing garage is 150 feet from the existing house. He stated the house is on a hill and that there is a 20% grade from the existing garage to the front of the house and that it would be impractical to build a garage in that location because of the grade differential. He continued that he does not have an attached garage at the present time. He stated he would like to build a 3-car detached garage with the same architecture as the existing house between the existing detached garage and the road. He continued he has a map showing the topography of the property and it shows the steep hill which has a drop of about 20%. He stated his neighbors both have structures which are closer to the road than his proposed structure location, so his structure will not stick out.

**COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS**

In response to Smulsky's question, Mr. Fage answered that the neighbor's structure to the north of his property is about 1200 square feet. In response to Smulsky's question, Mr. Fage answered that the neighbor's structure to the south is a smaller structure, approximately a 1-car garage, but he also has a 1200 square foot detached garage down closer to his home. Smulsky stated the structure is not visible from the lake. Mr. Fage added that the property is about 120 feet wide at that point and that it is about 45

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feet from the north and south lot lines. He continued that this property was originally two lots that were combined. Landis stated there are two different numbers on the submitted drawings: the delta drawing has the existing garage as 517 square feet and the submitted sketch shows the existing garage as 498 square feet. Mr. Fage responded that the structure is an approximate 500 square foot, 2-car garage and that he took the dimension off of another print that he had. In response to Landis's question, Mr. Fage answered that the proposed garage will be towards the lake, behind the 3 little trees and that the proposed location is staked out. Meisel stated this request is unlike some of the prior, recent requests for a larger accessory structure than the Zoning Ordinance allows. He continued there are a number of very large accessory structures, in the proximity of the applicant, that are pretty substantial in size on some very large lots that are very well set back from the road. He added that for the most part, due to the topography, these structures are not very visible at all from the road. In response to Smulsky's question, Meisel answered that he knows for sure several of the structures did not get variances. Meisel stated that to the north the Brown's accessory structure, 10139 Carmer Road, was built in the late 1970s to early 1980s and would be grandfathered in. He continued that the Straffon's structure, 10117 Carmer Road, is quite old too. Mr. Fage stated the Straffon structure was there when he moved into his home in 1987. Meisel stated there is a large structure 4 properties to the north that has been there for a number of years as well. He added this property has a standard detached garage relatively close to the house and then the large 3-car detached garage setback about 200 feet. Meisel continued that the distance from the road point of view is relatively equivalent on a north-south basis to what the applicant has proposed. He added this would be an argument for being harmonious with the area and being similar to what the neighbors have. Meisel stated the challenge is the second accessory structure because you are giving two variances here which are the exception rather than the rule in that immediate area. In response to Smulsky's question, Meisel answered that the Davis property, which has two accessory structures, is 4 properties to the north. Meisel added the difference there is one of them is so close to the home it almost looks attached and that it is buried and you would never see it. Meisel stated the applicant here arguably has the same situation because it would be behind what they are proposing and so nobody would be able to see it except the neighbors. In response to Smulsky's question, Mr. Fage answered that there was never an attached garage due to the topography of the property and a detached garage was built 150 feet from the house. Meisel stated the GIS calculated area is about 2½ acres. He added that while this is not zoned FR or RE, it is also substantially large and above the 2 acre threshold which it is typically utilized for additional accessory buildings and different yard locations in the other zoning districts. In response to Smulsky's question, Meisel answered that having 2 acres does not entitle the applicant to have two accessory structures or a 1200 square foot structure. He continued for him it does bring about the discussion as to what the Zoning Ordinance is trying to accomplish and what is unique about this particular request. Meisel stated the uniqueness is that the applicant is in an area with very large lots in the Lk-1 zoning district and the adjacent neighbors have similar structures, which existed prior to the current Zoning Ordinance. He continued that there are two intents and purposes in establishing a regulation like this in the Zoning Ordinance: 1) Trying to not clutter yards and populate them with structures in residential areas, and 2) Not obstruct views and site lines to the water. We are also trying to scale things to the area and this area here is, by scale, different than that relative to very large lots. Cypher stated a concern for meeting the 5

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criteria needed in order to grant a variance for all three variance requests. He continued the garage in front of the house in Lk-1 zoning, without a doubt, is not an issue or a problem but they have to ask for a variance for that. He continued how the Board substantiates a minimum variance request on a 1200 square foot garage and a 400 square foot area. Meisel stated pros and cons from prior decisions: the Board has looked at what the applicant was going to do with the structure, store stuff and get it out of the way which is always a benefit, but not necessarily a deciding factor; the Board has looked at the surrounding neighborhoods; has looked at the topography; has looked at screening, in particular a few of these where exceptions were made because they were so buried by surrounding trees that nobody would ever see it and it was on large pieces of land so there would be no adverse affect on anyone; and the Board has also tried to look at character and similar uses in the neighborhood. Meisel continued this request is sort of unique in that you know a ¼ mile north there is a different situation and that south there is a different situation, but if you are in this particular plat of properties which are all large estate size properties which are very long and have sloping topography, you have yet another different situation. Meisel stated the challenge is finding the unreasonable burden. Smulsky questioned if the unreasonable burden could apply to all 3 of the applicants variance requests. Meisel gave the scenario of the applicant wanting to build a 1200 square foot accessory building and what would be the unreasonable burden, since the neighbors have them and were allowed to build them and then the Township changed the Zoning Ordinance, so why can't the applicant build one, this would truly be an unreasonable burden as well as a substantial justice. Meisel stated the extraordinary circumstance could be the distance the structure would be from the road and with the significant change in the topography, nobody would see it. Smulsky thought the fact that the original garage was unattached because of the topography would be an extraordinary circumstance. She continued the other garages in the area are attached. Meisel stated the only counterpoint he would offer for attached versus detached would be that having a detached garage is one thing that is arguably permitted and the applicant already has one. He continued the real issue is the applicant wants a detached accessory structure in the front yard in Lk-1 zoning, which is acceptable if it is 800 square feet or less in size which is the intent of the Zoning Ordinance. He added the applicant wants a 1200 square foot accessory structure, so the Board needs to think of the other requests that were denied for 1200 square feet and why they were denied. Meisel stated the Board needs to ask if there is anything particular here that differentiates this applicant from the other requests. He continued the applicant, in his view, has substantial justice and he can even make an argument for an unreasonable burden. Cypher stated that looking at the map, the applicants lot is by far the largest lot along Carmer Road. Meisel responded that around Runyan Lake Road there are a lot of lots there in the 3 acre size. Cypher stated the applicant is asking to be able to have 2 accessory structures and for one to be 1200 square feet in size. Meisel responded that from an Lk-1 point of view it tried to sandwich in a bunch of requirements into something that just doesn't fit. Cypher stated that it is Re zoning across the street from this property. Wardin asked if the applicant considered one accessory structure instead of two. Mr. Fage responded that he needs the additional space for storage. Wardin stated the applicant is asking for 3 variances and he would feel more comfortable granting 2 of the variance requests but is uncomfortable with an additional 1200 square foot accessory structure. He continued it would be easier if the proposed 1200 square foot accessory structure was a bit larger and the applicant would get rid of the

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existing accessory structure. Cypher stated there are 5 criteria that must be met in order to grant a variance. He continued that the roadside location is not a problem, but the 1200 square foot size and a second accessory structure could be a problem. He added if the proposed accessory structure were 800 square feet in size, it would eliminate the 400 square foot variance and would be more acceptable. Cypher stated it is difficult to justify the variance requests because they are pushing the envelope in every direction they are going: asking for an additional building as well as asking for 400 square feet larger than what the Zoning Ordinance allows. Cypher continued there are guidelines that the Board must follow to substantiate granting a variance. Meisel stated that in this case there are approximately 5 other properties both north and south of the applicant where there are existing structures that are the same size or larger. Meisel continued you could make an argument that: 1) 800 square feet is small nowadays and 2) there are adjacent neighbors that have similar structures and the applicant wants a 1200 square foot structure and will consolidate, maybe it is ok and a reasonable compromise. He added the applicant already has a structure there, why not make it big enough to utilize but also in harmony with the adjacent neighbors. Meisel stated there is a potential argument with this request for unreasonable burden. Meisel continued that taking the requests separately there are two scenarios. He stated the Board could consider granting the variance request for 1200 square feet conditional upon the existing structure coming down. Cypher stated a variance could be made so the applicant could attach to the existing structure, not to exceed 1200 square feet. Meisel stated it would be a stretch to grant a variance for two accessory structures and a variance for 400 additional square feet and with this scenario it appears that unreasonable burden cannot be met. In response to Smulsky's question, Meisel answered that there is a good chance the Planning Commission would change the accessory structure size to allow greater than 800 square feet but does not think it would change to allow 2 accessory structures. Meisel stated the current regulation is too restrictive. Smulsky agreed. Cypher stated in Lk-1 zoning the Board has not had many requests asking for greater than 800 square feet. Meisel stated a lot of the lots cannot accommodate greater than an 800 square foot accessory structure with the setback requirements. Smulsky stated she would not be willing to consider a proposal unless the applicant adjusts the size or adjust the variance request down to one accessory structure on the property. Meisel stated he would be willing to make a proposal if the applicant agrees to have one accessory structure on the property that will not exceed 1200 square feet in size. He continued that if the applicant still wants two accessory structures he does not think the request would be granted. Meisel stated the challenge for the applicant is to ask for 1200 square feet or to keep the existing 500 square feet and expand it to 800 square feet and not need the variance. The applicant responded that it would be too costly to expand the existing accessory structure and that he does not want to tear down a good structure. Cypher stated the Board could table the variance requests to give the applicant time to rework his plans and decide in which direction he would like to go. Meisel stated the request could be tabled for 60 days or until the next meeting of the Zoning Board of Appeals, which would give the applicant time to see if the Planning Commission makes any changes to the Ordinance which would allow a larger accessory structure size. Cypher stated he was not looking to table the request to see what the Planning Commission was going to do, but allow the applicant time to determine if he would like to build a new 1200 square foot structure and tear down the existing structure or get a builder to look at how much it would cost to add on an additional 800 square feet to the existing

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structure. In response to Landis's question, Meisel answered that if the applicant chooses to move forward with the original request and there is a no vote, it means the applicant has exhausted his options with Tyrone Township, unless the Zoning Ordinance changes. Cypher stated the applicant could come back to the Zoning Board of Appeals with another request, but would have to pay for another appeal. Mr. Fage stated he would consider one accessory structure of 1200 square feet. Cypher stated a motion could be made for a single accessory structure not to exceed 1200 square feet, whether it is a new 1200 square foot accessory structure or an addition to the existing accessory structure. Landis questioned if the applicant needs to submit new plans once he decides what he wants to do. Meisel answered that as long as the location complies with the requirements set forth in the Zoning Ordinance and meets the minimum front yard setback, a new drawing would not have to be submitted.

**PUBLIC COMMENT**

None. No written correspondence was received prior to tonight's meeting.

**MOTION**

Meisel moved to grant the variance request of Louis Fage, located at 10123 Carmer Road, Tax Code 4704-10-300-034, for a 1200 square foot detached accessory structure, whether by modification of the existing structure or by construction of a new structure, in the front yard location, for the following findings of fact: Unreasonable Burden: The intent of the Zoning Ordinance in this case is to preserve sight lines to the water, minimize lot clutter and maintain scale with respect to the adjacent neighbors. There are no less than 3 existing detached structures within 5 properties north or south of the subject property. While these structures existed prior to current zoning ordinance they establish the character of the immediate area. The requested structure does not afford any additional impediment to views versus the prior existing structure it replaces. Strict compliance to the Zoning Ordinance unreasonably prejudices the appellant while providing no measurable benefit to the immediate neighbors. Substantial Justice: Several of the near neighbors have similar structures at similar setbacks. No neighbors have objected to the applicants request thus the variance is harmonious with the existing neighborhood. Minimum Variance Required: The minimum variance to construct a reasonably sized detached accessory structure similar to the near neighbors is being granted. Extraordinary Circumstances: The applicant lives in an area of large lots (2 acres +) with 700+ foot depths and sloping topography. The presence of a large detached accessory building is therefore neither unsightly nor obvious, nor will it interfere with the adjacent neighbors. Health and Safety: Granting this variance does not adversely impact public safety or create a public nuisance. The granting of this variance is conditional upon the appellant agreeing to a single detached structure not to exceed 1200 square feet, compliant with all other LK-1 Zoning standards, and not less than 300 feet from Carmer Road. The existing detached building must be removed within 180 days after completion of the new structure, if applicable. [Ref. Tyrone Township Zoning Ordinance No. 36 – Sections 21.02B (Accessory Structure Provisions – Number and Yard Locations) and 20.02O (Footnote to Schedule of Regulations)]. (Smulsky seconded.) Roll call vote: Meisel, yes; Wardin, yes; Smulsky, yes; Cypher, no; Landis, yes. The motion carried.

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**VARIANCE REQUEST**

- #2 Christian and Jennifer Sage, RE: Request for a 400 Square Foot Size Variance in Order to Build a Proposed 30 by 40-Foot Detached Accessory Structure and a Front Yard Location Variance in Order to Build the Proposed Structure to the West and in Front of the Existing House, Located at 12163 Indian Oak Drive, (TAX CODE # 4704-11-303-003)

Christian Sage requested a 400 square foot size variance in order to build a proposed 30 by 40-foot detached accessory structure and a front yard location variance in order to build the proposed structure to the west and in front of the existing house. He continued he has an attached garage now but needs the proposed structure for storage. He stated the proposed structure would be to the front and west of the existing house which will allow him to access the existing driveway. He continued he has 4 kids and will eventually need a place for additional vehicles. He stated that the proposed structure will look like the existing house, because of association rules.

**COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS**

In response to Landis's question, Mr. Sage answered that the association does not have a restriction on the size of the accessory structure. In response to Smulsky's question, Mr. Sage answered that they are trying to get the variance granted first and then they will go before their association committee. Smulsky stated her only concern is if the existing detached pool house would be considered an accessory structure. Landis added that there is an additional structure back in the woods. Mr. Sage responded that the structure in the woods is a 12-foot by 10-foot shed, which was there when they purchased their home that can be moved. He added that the shed does not have a cement foundation, only a wood base. In response to Landis's question, Mr. Sage answered that the additional structure next to the shed is a 6-foot by 4-foot greenhouse which can be removed if required. He added that they have only lived in their home for 18 months and the previous owner left plants that were not planted, so he built the greenhouse to protect the plants thru the winter. In response to Smulsky's question, the existing pool house is approximately 288 square feet in size. Mr. Sage stated that the proposed accessory structure will probably be 30-feet by 30-feet instead of 30-feet by 40-feet. Mr. Sage stated that if it weren't for the existing rock wall and the hill he would locate the proposed structure in that area. He continued he will have to do some excavating regardless of the location. Smulsky stated the pool house is a problem. At this time, several different conversations amongst Board members took place. Meisel stated he has other concerns with the variance request. He continued in regards to unreasonable burden, while driving thru the entire Top of the Pines area twice, there was not a single visible detached accessory structure anywhere that he could see. Jennifer Sage responded that there is a visible accessory structure at the end of the cul-de-sac. Mr. Sage added the accessory structure is beige in color with two dormers on it. Meisel stated his first concern was the proximity to the road and being harmonious with the surrounding neighbors. Meisel added that another concern would be in regards to the pool house and that technically there are two accessory structures there now. Meisel continued that he hoped his concerns would be addressed by the neighborhood association. Smulsky questioned if there is a minimum size for an accessory structure to be consider. After much discussion, the Board determined that the property is actually zoned RE and not R-1. Meisel stated that according to Zoning

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Ordinance Section 21.02B (Accessory Structure Provisions – Number and Yard Locations) - for FR and RE lots greater than 2 acres in size, more than one accessory structure or detached garage shall be permitted. Mr. Sage responded that their property is 3.25 acres. Meisel stated the applicant has a little more of a challenging situation because they actually have multiple front yards. He continued the proposed location is definitely a front yard location and he does not reasonably see the applicant doing anything not in the front yard location. Mr. Sage responded that the association does not want them to remove any trees. In response to Landis's question, Mr. Sage answered that there is not an envelope where they can remove trees; they can only remove trees within a certain diameter. In response to Landis's question, Mr. Sage answered that the distance from the back of the proposed garage to the lot line would be 90 feet. In response to Wardin's question, Meisel answered that since this is RE zoned, Section 20.02.O does not apply and the only issue before the Board would be the front yard location.

**PUBLIC COMMENT**

None. No written correspondence was received prior to tonight's meeting.

**MOTION**

Meisel moved to grant the variance request of Christian and Jennifer Sage, located at 12163 Indian Oak Drive, Tax Code 4704-11-303-003, for a front yard detached accessory structure location, noting the area variance requested is not needed in the RE zoning district (20.02.O), for the following findings of fact: Unreasonable Burden: The intent of the Zoning Ordinance in this case is to minimize lot clutter and maintain scale with respect to the adjacent neighbors. The immediate area features large lots and homes, and has a strong home owner's association. Strict compliance to the Zoning Ordinance unreasonably prejudices the appellant while providing no measurable benefit to the immediate neighbors if the strong association agrees the location meets their developmental intent. Substantial Justice: The Top of the Pines includes a strong neighborhood association. If the structure is permitted by the association it clearly complies with the developmental intent of the immediate area. The applicant has chosen a location to make use of the existing driveway to preserve trees and open space, relating harmoniously with the immediate area. Minimum Variance Required: The minimum variance to construct an accessory structure which can be accommodated within the site topography is being granted. Extraordinary Circumstances: The applicant's lot is technically a corner lot with dual frontage. The lot is further encumbered by topography restrictions which make rear yard location of the accessory structure impractical. Health and Safety: Granting this variance does not adversely impact public safety or create a public nuisance. [Ref. Tyrone Township Zoning Ordinance No. 36 – Sections 21.02B (Accessory Structure Provisions – Number and Yard Locations) and 20.02.O (Footnote to Schedule of Regulations)]. (Wardin seconded.) Roll call vote: Smulsky, yes; Wardin, yes; Landis, yes; Meisel, yes; Cypher, yes. The motion carried.

**MISCELLANEOUS BUSINESS**

The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, November 8, 2010 at 7:30 p.m.

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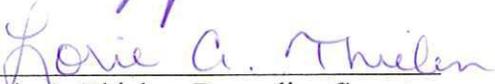
**ADJOURNMENT**

The meeting ended at 9:24p.m.



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Gregory Carnes, Chairman  
Tyrone Township Zoning Board of Appeals



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

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